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THE FUTURE OF MARRIAGE  
IN  
WESTERN CIVILISATION



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THE FUTURE OF MARRIAGE  
IN  
WESTERN CIVILISATION

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## INTRODUCTION

RECENT years have been notable for an enormous literature dealing with sex and marriage. A dominant note of it is the assertion that the rapid changes in all human relationships which characterise our age are particularly great in the relationships between the sexes. Marriage is said to be facing a crisis; and some writers even speak of its collapse or "bankruptcy", and of "free love" taking its place. We are told that marriage no longer binds, no longer unites; that "the new casual way of sexing has modified all our traditional thinking on the subject of holy matrimony"; that the family has disintegrated beyond repair; that home has become merely "a place to dine and die"; and that the time will come when marriage and the family have altogether ceased to exist.

My earlier study of the history of marriage naturally gives me an additional interest in its future. It may be considered out of place for a sociologist to indulge in prognostications. But did not Comte say that we seek to know in order to foresee, that the final goal of science is to foretell future events? In any case, all our predictions must be based on facts that are known to us. How then are these facts to be utilised? It has been pointed out that, with regard to the relationships of the sexes, our knowledge of the lines of evolution in the past and of the tendencies at present is fruitful for the understanding of what is likely to happen in the future. But it may be misleading unless we also know the causes of those trends. In this respect



the speculations on coming events must resemble those on prehistoric ones. In my *History of Human Marriage* I laid down the rule that we can postulate the ancient prevalence of certain phenomena only if we find out their causes and may assume that the latter have operated in the past without being checked by other causes. So also we can predict future occurrences, with some hope of success, only if we may assume that the causes of such occurrences will operate without being checked by other causes.

This is the method which I am going to apply to my inquiry in this book. I shall deal with various aspects of marriage as they exist to-day, and by examining their causes try to find an answer to the question whether they are likely to survive or to undergo a change. Many of those causes cannot be properly understood without a knowledge of the past. Hence I shall repeatedly have to fall back upon my earlier researches in the history of marriage, when pondering over its future.

## CHAPTER I

### THE MEANING AND ORIGIN OF MARRIAGE

IN the earlier editions of my *History of Human Marriage* I defined marriage as “ a more or less durable connection between male and female, lasting beyond the mere act of propagation till after the birth of the offspring ”. This definition has been much criticised, and not without reason. We do not say that a man and a woman are married simply because they live together, have a child together, and remain together after its birth; and on the other hand, there are married couples who get no children at all.

In the ordinary sense of the term, marriage is a social institution which may be defined as a relation of one or more men to one or more women that is recognised by custom or law, and involves certain rights and duties both in the case of the parties entering the union and in the case of the children born of it. These rights and duties vary among different peoples and cannot, therefore, all be included in a general definition; but there must, of course, be something that they have in common. Marriage always implies the right of sexual intercourse: society holds such intercourse allowable in the case of husband and wife, and, generally speaking, regards it as their duty to gratify in some measure the other partner's desire. But the right to sexual intercourse is not necessarily exclusive: there are polyandrous, polygynous, and group-marriages, and even where monogamy is the only legal form of marriage, adultery committed by the husband is not always

recognised as a ground for dissolving the union.

The sexual side of marriage is nearly always combined with the living together of husband and wife; a mediaeval adage says, "Boire, manger, coucher ensemble est mariage, ce me semble".<sup>1</sup> Marriage is also an economic institution, which may in various ways affect the proprietary rights of the parties. Since ancient times it has been the husband's duty, so far as it is possible and necessary, to support his wife and children; but it may also be their duty to work for him. Even the Russian Soviet law, which does not compel either spouse to follow the other if the latter changes residence, recognises the economic aspect of marriage by prescribing that the husband shall support his wife and the wife her husband in case the other party is necessitous and unable to work.<sup>2</sup>

As a rule, the husband has some power over his wife and children, although his power over the children is in most cases of limited duration. Very often marriage determines the place that a newly born individual is to take in the social structure of the community to which he or she belongs; but this can scarcely, as has sometimes been alleged,<sup>3</sup> be regarded as the chief and primary function of marriage, considering how frequently illegitimate children are treated exactly like legitimate ones with regard to descent, inheritance, and succession. It is, finally, necessary that the union, to be recognised as a marriage, should be concluded in accordance with the rules laid down by custom or law, whatever these rules may be. They may require the consent of the

<sup>1</sup> W. Schäffner, *Geschichte der Rechtsverfassung Frankreichs*, iii. (Frankfurt a. M., 1850), p. 186.

<sup>2</sup> D. M. Kauschansky, 'Die persönliche und wirtschaftliche Lage der Frau in der Ehe nach europäischem Recht', in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xviii. (Berlin & Köln, 1932), pp. 379, 484.

<sup>3</sup> W. H. R. Rivers, *The History of Melanesian Society*, ii. (Cambridge, 1914), p. 145.



parties themselves or of their parents, or of both the parties and their parents. They may compel the man to give some consideration for his bride, or the parents of the latter to provide her with a dowry. They may prescribe the performance of a particular marriage ceremony of one kind or other. And no man and woman are regarded as husband and wife unless the conditions stipulated by custom or law are complied with.

In the present treatise I shall throughout use the term " marriage " in its conventional sense, as the name for a social institution sanctioned by custom or law. At the same time I maintain that my earlier definition had a deep biological foundation, as applying to a relation which exists among many species of animals as well as in mankind. I am of opinion that the institution of marriage has most probably developed out of a primeval habit: that even in primitive times it was the habit for a man and a woman, or several women, to live together, to have sexual relations with each other, and to rear their offspring in common, the man being the guardian of the family and the woman his helpmate and the nurse of their children. This habit was sanctioned by custom, and afterwards by law, and was thus transformed into a social institution.

Similar habits are found among many species of the animal kingdom, in which male and female remain together not only during the pairing season but till after the birth of the offspring. We may assume that the male is induced to stay with the female so long, even after the sexual relations have ceased, by an instinct which has been acquired through the process of natural selection, because it has a tendency to preserve the next generation and thereby the species. This is indicated by the fact that in such cases he not only stays with the female and young, but also takes care of them. Marital and paternal instincts, like maternal affection, seem to

be necessary for the existence of certain species. This is the case with birds; among the large majority of them male and female keep together after the breeding season, and in very many species the parental instinct has reached a high degree of intensity on the father's side as well as on the mother's. Among mammals the young cannot do without their mother, who is consequently ardently concerned for their welfare, but in most of them the relations between the sexes are restricted to the pairing season. Yet there are also various species in which they are of a more durable character, and the male acts as a guardian of the family; indeed I have found that those species are considerably more numerous than I was aware of at the time when I first set forth my theory.<sup>1</sup> To them belong the apes. According to most earlier accounts of the orang-utan only solitary old males, or females with young, or sometimes females and at other times males accompanied by half-grown young, had been met with; but more recently Volz<sup>2</sup> and Munnecke<sup>3</sup> have definitely proved the existence of family associations with that ape, whereas it apparently never, or scarcely ever, congregates in larger groups. The social unit of the chimpanzee<sup>4</sup> and gorilla<sup>5</sup> is the family; but several families may associate and then constitute a band or herd, in which a mature male acts as leader.<sup>6</sup> The family is asserted to be the nucleus of the society also among the smaller gregarious monkeys, never losing its identity within the herd; even the enormous herds of a species like the baboon consist of

<sup>1</sup> See my *Three Essays on Sex and Marriage* (London, 1934), p. 171 *sqq.*

<sup>2</sup> W. Volz, *Nord-Sumatra*, ii. (Berlin, 1912), p. 364.

<sup>3</sup> W. Munnecke, *Mit Hagenbeck im Dschungel* (Berlin, 1931), p. 77 *sqq.*

<sup>4</sup> Cf. R. M. and Ada W. Yerkes, *The Great Apes* (New Haven & London, 1929), p. 541.

<sup>5</sup> Cf. *ibid.* p. 541.

<sup>6</sup> *Three Essays on Sex and Marriage*, p. 181 *sqq.*



numerous families banded together.<sup>1</sup>

In the case of the apes there are some obvious facts that may account for the need of marital and paternal protection. One is the small number of young: the female brings forth but one at a time. Another is the long period of infancy: the gibbon is said to achieve sexual maturity at five to eight years of age, the orang-utan and chimpanzee at eight to twelve, the gorilla at ten to fourteen.<sup>2</sup> Finally, none of these apes is permanently gregarious; even in the Cameroons, where the gorilla is particularly sociable, the herd scatters over a fairly wide district in search of food.<sup>3</sup> These considerations are of importance for a discussion of the origin of the family in mankind. The family consisting of parents and children prevails among the lowest savages as well as among the most civilised races of men; and we may suppose that the factors which made marital and paternal relations indispensable for the apes also made them so for our earliest human or half-human ancestors. If, as most authorities maintain, on the basis of morphological resemblances, man and apes have evolved from a common type, there is no doubt that in mankind, too, the number of children has always been comparatively very small, and that the period of infancy has always been comparatively very long; and it seems to me highly probable that with primitive man, as with the anthropoids, the large quantities of food which he required on account of his size were a hindrance to a permanently gregarious mode of life and therefore made family relations more useful for the preservation of the offspring. There are

<sup>1</sup> S. Zuckerman, *The Social Life of Monkeys and Apes* (London, 1932), pp. 147, 212, 213, 314 *sq.*; F. Doflein, *Das Tier als Glied des Naturganzen* (Leipzig & Berlin, 1914), pp. 692, 694.

<sup>2</sup> R. M. and Ada W. Yerkes, *op. cit.* p. 543.

<sup>3</sup> E. Reichenow, 'Biologische Beobachtungen an Gorilla und Schimpanse', in *Sitzungsbericht der Gesellschaft Naturforschender Freunde zu Berlin*, no. 1, 1920 (Berlin), p. 15 *sqq.*

even now savages among whom the separate families often are compelled to give up the protection afforded them by living together, in order to find the food necessary for their subsistence, and may remain separated from the common group even for a considerable time; and this is the case not only in desolate regions where the supply of food is unusually scarce, but even in countries much more favoured by nature.<sup>1</sup>

I have so far spoken of habits, not of institutions. But there is an intimate connection between them. Social habits have a strong tendency to become true customs, that is, rules of conduct in addition to their being habits. A habit may develop into a genuine custom simply because people are inclined to disapprove of anything which is unusual. But in the present case the transition from habit to custom has undoubtedly a deeper foundation. If, as I maintain, men are induced by instincts to remain with a woman with whom they have had sexual relations and to take care of her and of their common offspring, other members of the group, endowed with similar instincts, would feel moral resentment against a man who forsook his mate and children. And, as I have pointed out in another work, public or moral resentment or disapproval is at the bottom of the rules of custom and of all duties and rights.<sup>2</sup> That the functions of the husband and father are not merely of the sexual and procreative kind, but involve the duties of supporting and protecting the wife and children, is testified by an array of facts relating to peoples in all quarters of the world and in all stages of civilisation.<sup>3</sup> Many savages do not

<sup>1</sup> E. Westermarck, *The History of Human Marriage*, i. (London, 1921), p. 68.

<sup>2</sup> *Idem*, *The Origin and Development of the Moral Ideas*, i. (London, 1912), pp. 118-122, 135-137, 139 *sqq.* For the characteristics and origin of moral disapproval, see *ibid.* vol. i. ch. ii. p. 21 *sqq.*

<sup>3</sup> *The History of Human Marriage*, i. 46 *sqq.*



allow a man to marry until he has given some proof of his ability to fulfil those duties.<sup>1</sup> Marriage and the family are thus most intimately connected with one another. Indeed, quite frequently true married life does not begin for persons who are formally married or betrothed, or a marriage does not become definite, until a child is born or there are signs of pregnancy; whilst in other cases sexual relations that happen to lead to pregnancy or the birth of a child are, as a rule, followed by marriage or make marriage compulsory.<sup>2</sup> We may truly say that marriage is rooted in the family rather than the family in marriage.

A different explanation of the origin of the family among the primates has recently been given by Dr. Zuckerman. Whilst I have attributed it to instincts, added to the sexual instinct, which are of vital importance to the species, he, on the other hand, maintains that the factor underlying the permanent association of the sexes among apes and monkeys is their uninterrupted reproductive life: "the male primate", he says, "is always sexually potent, while the female is also to some extent receptive".<sup>3</sup> In my *History of Human Marriage* I considered the possibility of the family having such an origin as has been suggested by Dr. Zuckerman;<sup>4</sup> but I found reasons to believe that the anthropoid apes have a definite sexual season, and that the pairing of our earliest human or half-human ancestors also was restricted to a certain season of the year.<sup>5</sup> In support of the former opinion I quoted some statements then known to me—including one communicated to me by Alfred Russel Wallace, which was based on his personal experience of the orang-utan in Borneo—and in a more recent work I have added other

<sup>1</sup> *Ibid.* i. 49 *sqq.*

<sup>2</sup> *Ibid.* i. 72 *sqq.*

<sup>3</sup> Zuckerman, *op. cit.* pp. 55, 313.

<sup>4</sup> *The History of Human Marriage*, i. 77.

<sup>5</sup> *Ibid.* i. 81 *sqq.*

statements of a similar character.<sup>1</sup> Dr. Zuckerman, who mentions most of these statements, speaks of them disparagingly as being based mainly upon the narratives of travellers, and asserts that, so far as it is possible to make generalisations, "all Old World monkeys about which accurate information is available breed at any time".<sup>2</sup> As regards the anthropoid apes this information consists almost exclusively of records concerning animals kept in confinement. Now it is a common opinion that such animals do not afford a reliable source of information about the breeding activity of wild ones, because the generative system may be affected by conditions attending captivity; and Dr. Zuckerman himself seems to have shared this opinion till quite recently.<sup>3</sup> He says that definite knowledge about the breeding of wild Old World primates exists, so far as he is aware, only in the case of the Chacma baboon, an animal that is widely scattered over South Africa; and by examining several adult females of this monkey, collected on a farm in the Eastern Province of South Africa, he found that they had become pregnant at different times of the year, which proved the absence of a demarcated breeding season.<sup>4</sup>

The "accurate information" we possess about the breeding activities of Old World monkeys is thus infinitesimal, and hardly justifies any far-reaching conclusions. Apart from the extremely hypothetical character of the assumption that the times when a monkey breeds in captivity are also the times when it would breed in its natural habitat, it should be remembered

<sup>1</sup> *Three Essays on Sex and Marriage*, p. 199 sq.

<sup>2</sup> Zuckerman, *op. cit.* pp. 45, 50.

<sup>3</sup> *Idem*, 'The Menstrual Cycle of the Primates', in *Proceedings of the Zoological Society of London*, 1930, p. 693 sq.

<sup>4</sup> *Idem*, *The Social Life of Monkeys and Apes*, p. 49 sq.; *idem*, 'The Menstrual Cycle of the Primates', in *Proceedings of the Zoological Society of London*, 1931, p. 341.



that the very limited amount of information available about the breeding in captivity refers to certain species only; and Dr. Zuckerman himself has, in another connection, pointed out the danger of arguing from the behaviour of one animal to that of another. Curiously enough, he has illustrated this by the statement that the spotted deer of India breeds at all times of the year, whereas the red deer of Western Asia, which belongs to the same zoological family, has a short mating season, the only time when the sexes meet.<sup>1</sup> Another similar fact, recorded by Baker, is that the white-footed mouse of North America breeds all the year round in the wild, although allied genera have a definite breeding season.<sup>2</sup> But even the breeding records of captive monkeys are not unanimous.<sup>3</sup> With reference to the anthropoids, R. M. and Ada W. Yerkes, who are very cautious in their estimation of evidence and perfectly unbiassed by any particular theories, write in their exhaustive work on the *Great Apes*: "The facts available suggest that there is a definite breeding season, or possibly seasons, for each of the five types" (the gibbon, siamang, orang-utan, chimpanzee, and gorilla).<sup>4</sup>

The occurrence of a definite breeding season does not *ipso facto* imply that sexual activity also takes place only at a certain time of the year: it may possibly depend merely upon the fact that the female's capacity for becoming pregnant is restricted to a certain period and not upon absence of coition. It has been proved that monkeys kept in confinement may be sexually active at any time;<sup>5</sup> but it has not been proved that the

<sup>1</sup> *Idem*, *The Social Life of Monkeys and Apes*, p. 25.

<sup>2</sup> J. R. Baker, *Sex in Man and Animals* (London, 1926), p. 144.

<sup>3</sup> See *Three Essays on Sex and Marriage*, p. 202. In the same work I have also in other respects subjected Dr. Zuckerman's theory to a more detailed criticism.

<sup>4</sup> R. M. and Ada W. Yerkes, *op. cit.* p. 542.

<sup>5</sup> G. S. Miller, 'Some Elements of Sexual Behavior in Primates and their possible Influence on the Beginnings of Human Social

same is generally the case with monkeys in a state of nature. If this could be proved we might no doubt say that the more or less permanent sexual stimulus would help to hold male and female together. But even then I venture to suggest that such uninterrupted sexual capacity might itself be the result of natural selection owing to its tendency to preserve the offspring. It would thus have the same effect as the breeding season, which I have taken to be fundamentally governed by the law that the young shall be born at the time which is most favourable for their survival.<sup>1</sup>

In no case, however, could uninterrupted sexual stimulus, which Dr. Zuckerman regards as the sole source of the family with monkey and man, explain the male's relation to the offspring and the paternal instinct underlying it, which has been noticed both in the anthropoids and in other sub-human primates. Diard was told by the Malays, and found it afterwards to be true, that the young siamangs, when in their helpless state, are carried about by their parents, the males by the father and the females by the mother.<sup>2</sup> Von Oertzen states that among chimpanzees the father, as well as the mother, defends the young in case of danger.<sup>3</sup> The Duke of Mecklenburg tells us that one morning when he had shot down a young chimpanzee from a tree, an old male appeared with his mouth wide open, evidently inclined to attack him; he adds that old males

Development', in *Journal of Mammalogy*, ix. (Baltimore, 1928), p. 278 *sqq.*

<sup>1</sup> *The History of Human Marriage*, i. 78 *sqq.* My theory has gained the support of Dr. F. H. A. Marshall (*The Physiology of Reproduction* [London, 1922], p. 29 *sq.*), who has answered objections raised by Mr. W. Heape ('The "Sexual Season" of Mammals and the Relation of the "Pro-oestrus" to Menstruation', in *The Quarterly Journal of Microscopical Science*, N.S. vol. xliv. pt. i. [London, 1900], p. 19 *sq.*).

<sup>2</sup> A. E. Brehm, *Thierleben*, i. (Leipzig, 1877), p. 97.

<sup>3</sup> *Ibid.* xiii. (Leipzig, 1920), p. 661.



“ often accompany the families at a distance, but keep to themselves ”.<sup>1</sup> Livingstone says of the “ sokos ” in the Manuyema country, which would seem to be the common chimpanzee,<sup>2</sup> that “ a male often carries a child, especially if they are passing from one patch of forest to another over a grassy space; he then gives it to the mother ”.<sup>3</sup> Forbes writes, perhaps on the authority of Von Koppenfels,<sup>4</sup> that chimpanzees build resting-places, not far from the ground, “ in which the female and her young take refuge for the night, the male placing himself on guard beneath ”.<sup>5</sup> Von Koppenfels also says that the male gorilla in a similar manner protects the female and their young from the nocturnal attacks of leopards.<sup>6</sup> Burbridge mentions a case in which a great gorilla met death in a headlong charge to rescue his young.<sup>7</sup> Speaking of the gorilla of the Cameroons, Guthrie relates on native authority that in one instance, when a band was attacked by two men, “ the old gorilla of the band first got his family out of danger, and then returned to the encounter ”.<sup>8</sup> Brehm mentions instances of the paternal instinct among some other monkeys.<sup>9</sup> It should finally be noticed, with reference to Dr. Zuckerman’s hypothesis, that the lasting association of the sexes among the primates by no means presupposes an uninterrupted

<sup>1</sup> The Duke Adolphus Frederick of Mecklenburg, *In the Heart of Africa* (London, 1910), p. 139.

<sup>2</sup> H. O. Forbes, *A Hand-book to the Primates*, ii. (London, 1894), p. 197.

<sup>3</sup> D. Livingstone, *The Last Journals of, in Central Africa*, ii. (London, 1874), p. 55.

<sup>4</sup> Forbes, *op. cit.* p. 193; H. von Koppenfels, ‘ Meine Jagden auf Gorillas ’, in *Die Gartenlaube*, 1877 (Leipzig), p. 418.

<sup>5</sup> Forbes, *op. cit.* ii. 193.

<sup>6</sup> Von Koppenfels, *loc. cit.* p. 418 sq.

<sup>7</sup> B. Burbridge, *Gorilla* (London, 1928), p. 238.

<sup>8</sup> A. E. Jenks, ‘ Bulu Knowledge of the Gorilla and Chimpanzee ’, in *The American Anthropologist*, N.S. xiii. (Lancaster, 1911), p. 58.

<sup>9</sup> Brehm, *op. cit.* xiii. 488, 571, 581.

sexual capacity, since similar associations are found in many species whose sexual life is restricted to a certain season.

When I first set forth my theory of the origin of marriage I had to oppose a view which was then held by many eminent sociologists, namely, that the human race must originally have lived in a state of promiscuity, where individual marriage did not exist, where all the men in a horde or tribe had, indiscriminately, access to all the women, and where the children born of these unions belonged to the community at large. I do not know that this view nowadays is supported by any English writer, but it has, to some extent, survived in Germany. Iwan Bloch says that recent ethnological research has proved the untenability of my criticism, that there can be no doubt whatever that in the beginnings of human development a state of promiscuity actually prevailed, that it even seems incomprehensible how a dispute could ever have arisen in the matter; and he quotes with approval P. Näcke's dictum that an original state resembling promiscuity can, in fact, be assumed *a priori*. He argues that since even in our time, after the development of a sexual morality penetrating and influencing our entire social life, the human need for sexual variety continues to manifest itself in almost undiminished strength, "we can hardly regard it as necessary to prove that in primitive conditions sexual promiscuity was a more original, and, indeed, a more natural, state than marriage".<sup>1</sup> Now it is certainly true that the sexual instinct is stimulated by a change of its object, and that this taste for variety is a cause of much extra-matrimonial intercourse of a more or less promiscuous character. But the assumption that it dominated primitive man to such an extent as to exclude all unions of greater durability is warranted

<sup>1</sup> I. Bloch, *The Sexual Life of Our Time* (London, 1908), p. 188 *sqq.*



by nothing that is known either about anthropoid apes or savage men. When Dr. Bloch and some other authors speak of early marriage, they are too apt to overlook the fact that a wife is not only a cause of sexual pleasure but a helpmate, a food-provider, a cook, and a mother of children.

The main evidence adduced in support of the hypothesis of primitive promiscuity flows from two different sources. First, there are in books of ancient and modern writers notices of peoples who are alleged to live or to have lived promiscuously. Secondly, there are certain customs which have been interpreted as survivals of such a state in the past. As to the evidence of the former kind, I think it would be difficult to find a more untrustworthy collection of statements. Some of them are simply misrepresentations of theorists in which sexual laxity, frequency of separation, polyandry, group-marriage or something like it, or the absence of a marriage ceremony or of a word for "to marry" or of a marriage union similar to our own, is confounded with promiscuity. Others are based upon indefinite evidence which may be interpreted in one way or other, or on information proved to be inaccurate. And not a single statement can be said to be authoritative or even to make the existence of promiscuity as the regular form of the relations between the sexes at all probable in any case. That no known savage people nowadays is, or recently was, living in such a state is quite obvious; and this greatly discredits the supposition that promiscuity prevailed among any of the peoples mentioned by classical or mediaeval writers in their summary and vague accounts. Considering how uncertain the information is which people give about the sexual relations of their own neighbours, we must be careful not to accept as trustworthy evidence the statements made by Greek and Roman authors with reference to more or less distant tribes in Africa or Asia of whom they

manifestly possessed very little knowledge.<sup>1</sup> Nor can I ascribe any evidentiary value at all to the supposed survivals of earlier promiscuity. After a detailed examination of them I arrived at the conclusion that none of them justifies the assumption that promiscuity has ever been the prevailing form of sexual relations among a single people, and far less that it has constituted a general stage in the social development of man.<sup>2</sup> But the hypothesis of promiscuity not only lacks all foundation in fact: it is positively opposed to the most probable inference we are able to make as regards the early condition of mankind. Darwin remarked that from what we know of the jealousy of all male quadrupeds promiscuous intercourse is utterly unlikely to prevail in a state of nature.<sup>3</sup>

Many writers believe that the earliest form of marriage was a so-called group-marriage, implying a union between a certain group of men and a certain group of women. The latest exponent of this theory, Dr. Briffault, writes that "the regulation of collective sexual relations between given groups has everywhere preceded any regulation of those relations between individual members of those groups", and that "in their origin marriage regulations had no reference to such individual relations, but to relations between groups".<sup>4</sup> Group-marriage has been found among many peoples who practise polyandry: in Tibet, India, and Ceylon.<sup>5</sup> In several statements referring to these cases it is either implied or directly said that it has arisen as a combination of polygyny with polyandry;

<sup>1</sup> *The History of Human Marriage*, vol. i. ch. iii.

<sup>2</sup> *Ibid.* vol. i. chs. iv.-viii.

<sup>3</sup> C. Darwin, *The Descent of Man*, ii. (London, 1888), p. 394 sq. Before Darwin J. J. Virey (*De la femme* [Paris, 1823], p. 148) argued that promiscuity would have caused perpetual fighting between the men.

<sup>4</sup> R. Briffault, *The Mothers*, i. (London, 1927), pp. 766, 607.

<sup>5</sup> *The History of Human Marriage*, iii. 223 sqq.



and in other instances the same may be inferred from the facts, that both in Tibet and India polyandry is much more prevalent than group-marriage, that the latter occurs there only side by side with polyandry, and that the occasional combination of polygyny with polyandry, when the circumstances permit it and make it convenient, is easy to explain, whereas no satisfactory reason has been given for the opinion that polyandry has developed out of an earlier stage of group-marriage. So far as I am aware, the latter has not been proved to occur anywhere except in connection with polyandry. But there are peoples who have some kind of sex communism, in which several men have the right of access to several women, although none of the women is properly married to more than one of them, who lives with her, has economic interests in common with her, and has paternal rights over the children borne by her.<sup>1</sup> The fact that some of our authorities apply the term "group-marriage" to relations of that sort should not deceive us as regards their true nature. Even Dr. Briffault, who defines marriage, when contracted between individuals, as essentially an economic association, with or without exclusive sexual rights, uses the same term for group-relations which are purely sexual, without any economic aspect at all. It is also the sexual side of the relations that has led him and others to look for evidence of an early stage of group-marriage in various customs which had previously been represented as survivals of promiscuity, such as the classificatory system of relationship, the practice of exchanging wives temporarily, the duty of offering one's wife to a guest, polyandry, the levirate, and the liberty granted to unmarried women. Dr. Briffault even says that "in those societies which have preserved their primitive organisation in clans or intermarrying groups, recognised freedom of access between any male of the one

<sup>1</sup> *Ibid.* iii. 228 *sqq.*

group and any female of the other is, in fact, the rule rather than the exception".<sup>1</sup> I have examined his evidence in detail, and doubt whether such unlimited freedom has been proved to exist even among a single people.<sup>2</sup>

According to Dr. Briffault "the earliest human assemblages must . . . have been derived from animal groups belonging to the type of the animal family". He alleges that it is among mammals the invariable tendency of the female to segregate herself and to form an isolated group with her offspring. The animal family is the product of the maternal instincts alone; the mother is the sole centre and bond of it. The sexual instincts which bring the male and the female together have no part in the formation of it. The male is not an essential member of it. He may join the maternal group, but commonly does not do so, and when he attaches himself to it his association with it is loose and precarious; in no animal species does it appear to survive the exercise of the sexual functions. These functions are the only ones that the male fulfils in the animal family when he is a member of it; the protective functions are exercised by the female alone. All this is alleged to be true also of the nearest animal relatives of man, the anthropoid apes.<sup>3</sup> This is an amazing statement, utterly incompatible with what we know about the habits of the anthropoids.

Not less extraordinary is Dr. Briffault's assertion that in mankind the family even nowadays is in many instances scarcely found to exist as a solidary and recognised group.<sup>4</sup> It is characteristic of the method with which he handles ethnological evidence that he

<sup>1</sup> Briffault, *op. cit.* i. 608 sq.

<sup>2</sup> *Three Essays on Sex and Marriage*, p. 277 sqq.

<sup>3</sup> Briffault, *op. cit.* i. 124, 187 sqq., 520.

<sup>4</sup> *Ibid.* i. 505 sqq. For a criticism of his evidence, see my *Three Essays on Sex and Marriage*, p. 212 sqq.



completely ignores my large collection of facts, covering many pages, which conclusively shows that among modern savages living in the hunting and food-collecting stage, or at most acquainted with some primitive mode of agriculture, the family consisting of parents and children is a very well marked social unit;<sup>1</sup> and it is so also among peoples who trace descent through the mother. Its world-wide prevalence has more recently been affirmed by Professor Malinowski, who has an intimate personal experience of matrilineal savages. He writes: "The typical family, a group consisting of mother, father, and their progeny, is found in all communities, savage, barbarous, and civilised; everywhere it plays an important rôle and influences the whole extent of social organisation and culture. . . . In no ethnographic area is the family absent as a domestic institution. . . . It is an undeniable fact that the family is universal and sociologically more important than the clan which, in the evolution of humanity, it preceded and outlasted".<sup>2</sup> If it exists universally both among monkeys and men, it would be a true marvel if primitive man had been the only primate who had been without it.

Theories concerning the earliest form of sexual relations in mankind have influenced speculations as to the future of marriage and the family. Socialist writers have tried to reinforce their social ideals by references to primeval sexual communism.<sup>3</sup> According to Dr. Briffault, "every inference that can be

<sup>1</sup> *The History of Human Marriage*, i. 54 sqq.

<sup>2</sup> B. Malinowski, 'Kinship', in *Encyclopædia Britannica*, xiii. (London, 1929), pp. 404, 405, 408.

<sup>3</sup> A. Bebel, *Woman in the Past, Present, and Future* (London, 1885), p. 9; F. Engels, *Der Ursprung der Familie, des Privateigentums und des Staats* (Hottingen-Zürich, 1884), p. 17. See also J. Loewenthal's reference to Krishe's book, *Das Rätsel der Mutterrechtsgesellschaft* (München, 1927), in *Zeitschrift für Sexualwissenschaft*, xiv. (Berlin & Köln, 1927), p. 27 sq.

drawn from the facts of social history shows that the inevitable consequence must be a tendency for marriage to revert from patriarchal to so-called matriarchal forms; that is, to a very loose and unstable association".<sup>1</sup> I myself have been accused of attempting to justify the perpetuity of the family by representing it as the basic unit of primitive society.<sup>2</sup> But it never occurred to me to regard the existence of the family in primitive humanity as a sufficient reason for its preservation *ad infinitum*. It is, on the contrary, quite obvious that the general cause to which I have traced its origin, the need of the species, no longer operates: mankind would not succumb if women and children now and in the future had no husband or father to look after them. Yet I think that the origin of marriage and the family has had some bearing on their continuance by leaving behind deep-rooted instincts which will help to preserve them, even though no longer necessary for the survival of the race.

<sup>1</sup> R. Briffault, 'Introduction' to V. F. Calverton's book, *The Bankruptcy of Marriage* (London, 1931), p. 7.

<sup>2</sup> V. F. Calverton, 'The Compulsive Basis of Social Thought', in *American Journal of Sociology*, xxxvi. (Chicago, 1931), pp. 700, 702.



## CHAPTER II

### THE ESSENTIAL ELEMENTS IN MARRIAGE

THERE are three essential elements in every normal marriage: the gratification of the sexual impulse, the relation between husband and wife apart from it, and procreation. The comparative importance attached to these factors has varied considerably. The primary object of marriage has always been sexual union, as sexual desire is obviously the primary motive of relations between the sexes among animals, even when these relations last beyond the pairing season till after the birth of the offspring. But among existing savages the aspect of procreation also plays a very important rôle. The desire for offspring is very strong among them. A woman is valued not only as a wife but also as a mother; and the respect in which she is held is often proportionate to her fecundity, a barren wife being despised as an unnatural and useless being.<sup>1</sup> Pre-nuptial relations frequently have the character of a trial by which the lover ascertains that the woman will gratify his desire for offspring, and in such a case marriage is not concluded before the birth of a child or until there are signs of pregnancy.<sup>2</sup> A very frequent cause of divorce among simple peoples is barrenness in the wife; and it is so not only where the husband may repudiate his wife at will, but also where his right of

<sup>1</sup> E. Westermarck, *The History of Human Marriage*, ii. (London, 1921), p. 31 *sq.*

<sup>2</sup> *Ibid.* i. 160.

divorcing her is restricted.<sup>1</sup> A man without offspring is an unfortunate being under savage conditions of life, where individual safety and welfare depend upon family ties, and the old have to be supported by the young. The childless man may even have to suffer after his death for lack of offspring, there being nobody to make offerings to his ghost.<sup>2</sup>

For a similar reason procreation has assumed an extraordinary importance among the peoples of archaic civilisation. According to Chinese ideas it is one of the greatest misfortunes that could befall a man, and at the same time an offence against the whole line of ancestors, to die without leaving a son to perpetuate the family cult; for it would doom father, mother, and all the ancestry in the Nether-world to a pitiable existence without descendants enough to serve them properly.<sup>3</sup> Among the Semites we meet with the idea that a dead man who has no children will miss something in Shēol through not receiving that kind of worship which ancestors in early times appear to have received.<sup>4</sup> Among the Israelites procreation was the chief goal of marriage.<sup>5</sup> According to the Talmud "every Jew who does not occupy himself with generation is on a par with one who is guilty of bloodshed";<sup>6</sup> and all Jews desire to have a son who after his father's death can say the prayer on his behalf.<sup>7</sup> The ancient Indo-European nations believed that a man's happiness in the next world depended upon his having a continuous line of male descendants, whose

<sup>1</sup> *The History of Human Marriage*, iii. 290.

<sup>2</sup> *Ibid.* i. 362.

<sup>3</sup> *Ibid.* i. 375.

<sup>4</sup> T. K. Cheyne, 'Harlot', in Cheyne and J. S. Black, *Encyclopædia Biblica*, ii. (London, 1901), p. 1964.

<sup>5</sup> See *Psalms*, cxxvii. 4.

<sup>6</sup> Jebamoth, fol. 63 b, quoted by H. Vorwahl, 'Die Sexualität im Alten Testament', in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xv. (Berlin & Köln, 1928), p. 127.

<sup>7</sup> E. Brauer, 'Die Frau bei den südarabischen Juden', *ibid.* xviii. (Berlin & Köln, 1931), p. 158.



duty it would be to make the periodical offerings for the repose of his soul.<sup>1</sup> The old idea still survives in India: "a Hindu man must marry and beget children to perform his funeral rites, lest his spirit wander uneasily in the waste places of the earth".<sup>2</sup> In the Zoroastrian books we likewise meet with the idea that a man should marry and get progeny;<sup>3</sup> the man without a son cannot enter paradise because there is nobody to pay him the family worship.<sup>4</sup> Plato remarks that every individual is bound to provide for a continuance of representatives to succeed himself as ministers of the Divinity;<sup>5</sup> and Isaeus says: "All those who think their end approaching look forward with a prudent care that their houses may not become desolate, but that there may be some person to attend to their funeral rites and to perform the legal ceremonies at their tombs".<sup>6</sup> The ordinary Greek feeling on the object of marriage is no doubt expressed in the oration against Neaera, ascribed to Demosthenes, where it is said: "We keep mistresses for our pleasures, concubines for constant attendance, and wives to bear us legitimate children and to be our faithful housekeepers".<sup>7</sup>

A very different view of marriage was introduced into Europe by Christianity. It was permitted to man as a restraint, however imperfect, on the sinful licentiousness of the sexual impulse. Said St. Paul: "It is good for a man not to touch a woman. Nevertheless, to avoid fornication, let each man have his own wife,

<sup>1</sup> N. D. Fustel de Coulanges, *La Cité antique* (Paris, 1864), p. 54 *sq.*

<sup>2</sup> H. Risley, *The People of India* (London, 1915), p. 154.

<sup>3</sup> *Vendîdâd*, iv. 47 (*The Sacred Books of the East*, vol. iv. [Oxford, 1880]).

<sup>4</sup> J. Darmesteter, in *The Sacred Books of the East*, iv. p. lxii.

<sup>5</sup> Plato, *Leges*, vi. 773.

<sup>6</sup> Isaeus, *Oratio de Apollodori hereditate*, 30, p. 66.

<sup>7</sup> *Oratio in Neeram*, in Demosthenes, *Opera* (Parisiis, 1843), p. 1386.

and let each woman have her own husband".<sup>1</sup> He said nothing about procreation. But the Church also admitted marriage as a necessary expedient for the continuance of the human species, and at the same time pronounced this to be the only legitimate object of sexual intercourse even between husband and wife. The procreation of children was said to be the measure of a Christian's indulgence in appetite, just as the husbandman throwing the seed into the ground awaits the harvest, not sowing more upon it.<sup>2</sup> The Pope's encyclical of 31st December 1930 forbids the use of contraceptives on the ground that "the connubial act is naturally designed to evoke new life".<sup>3</sup>

Among orthodox Christians of other confessions we also find, to some extent, the theory that sexual intercourse is justifiable only as a means of generation; but it is certainly on the wane. Some interesting information on this point comes from America. Dr. Katharine B. Davis, who carried out a study on a thousand educated married women and about a thousand unmarried college women, put to them the question, "Are married people justified having intercourse except for the purpose of having children?" Only a small minority (15.3 per cent.) of those answering definitely this question replied negatively.<sup>4</sup> Dr. G. V. Hamilton put a similar question to one hundred married men and an equal number of married women, most of whom were well under forty years of age, residents of New York City, and classifiable as having attained a relatively

<sup>1</sup> 1 *Corinthians*, vii. 1 sq.

<sup>2</sup> Athenagoras, *Legatio pro Christianis*, 33 (J. P. Migne, *Patrologiæ cursus completus*, Ser. Graeca, vi. [Parisiis, 1857], col. 966).

<sup>3</sup> F. E. Traumann, 'Das Rundschreiben des Papstes Pius XI über die christliche Ehe und die Sexualreform', in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xviii. (Berlin & Köln, 1931), p. 124.

<sup>4</sup> Katharine B. Davis, *Factors in the Sex Life of Twenty-two Hundred Women* (New York & London, 1929), p. 355 sqq.



high level of culture. He formulated it thus: "Do you believe that it is right to have the sex act for any other purpose than to bring children into the world?" Eighty-five men and 81 women replied, "Yes, it is right"; and 11 men and 12 women, "Formerly believed it to be wrong, now believes it to be right".<sup>1</sup> Again, the question whether it is right to use methods for preventing pregnancy was answered in the affirmative by 89.7 per cent. of more than 1000 women belonging to the Davis group, and in the negative only by 10.2 per cent.<sup>2</sup> The enormous frequency of the use of contraceptives also bears testimony to people's feelings concerning it. The leader in the movement has been France, a largely Catholic country, where it started in the middle of the last century in the great cities and in the fertile districts of the south;<sup>3</sup> and the proportion of Catholic women who apply for advice at Margaret Sanger's clinic in New York is only one percentage lower than the proportion of Protestant women.<sup>4</sup> So far as England is concerned, Dr. A. W. Thomas wrote in 1906: "From my experience as a general practitioner, I have no hesitation in saying that 90 per cent. of young married couples of the comfortably-off classes use preventives";<sup>5</sup> and this rough estimate does not seem to be over the mark.<sup>6</sup> In Germany birth control was very prevalent before the War,<sup>7</sup> and has greatly increased

<sup>1</sup> G. V. Hamilton, *A Research in Marriage* (New York, 1929), p. 382.

<sup>2</sup> Davis, *op. cit.* 372 *sqq.*

<sup>3</sup> H. Harmsen, *Bevölkerungspolitik Frankreichs* (Berlin, 1927), reviewed in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xv. (Berlin & Köln, 1929), p. 588.

<sup>4</sup> Havelock Ellis, *More Essays of Love and Virtue* (London, 1931), p. 36 n. 1.

<sup>5</sup> A. W. Thomas, 'The Decline in the Birth Rate', in *British Medical Journal*, 1906, vol. ii. (London), p. 1066.

<sup>6</sup> See Havelock Ellis, *Studies in the Psychology of Sex*, vi. (Philadelphia, 1923), p. 589.

<sup>7</sup> L. D. Pesl, 'Fruchtabtreibung und Findelhaus', in *Zeitschrift*

afterwards.<sup>1</sup> In the United States 74·11 per cent. of the 985 married women who answered Dr. Davis' question referring to the use of contraceptives admitted it,<sup>2</sup> and 87 of the women belonging to the Hamilton group did the same.<sup>3</sup> At the same time contraception has still many opponents also in Protestant countries, and not only on political grounds as lowering the birth-rate; in Denmark there seems to be quite a widespread feeling against it.<sup>4</sup>

The use of contraceptives by a married couple does not, of course, mean that no children are wanted: it only implies a desire to control the appearance of children, their number, and the times when they are to be born. An American writer triumphantly exclaims: "For the younger generation, fecundity is out of the question. The new gospel is one of frank fun and happy-go-lucky pleasure seeking. . . . Reproduction has become a mere episode in the relations of the sexes. Procreation is not taken too seriously".<sup>5</sup> This is hardly in agreement with certain answers given to questionnaires submitted to young people in his own country. In the replies of a number of male students at the University of Mississippi "willingness to rear a family" takes a very prominent place, being put above

*für Sexualwissenschaft und Sexualpolitik*, xv. (Berlin & Köln, 1928), p. 260.

<sup>1</sup> A. Moll, 'Der "reaktionäre" Kongress für Sexualforschung', *ibid.* xiii. (Bonn, 1927), p. 330; F. Burgdörfer, *Der Geburtenrückgang und die Zukunft des deutschen Volkes* (Berlin, 1928), quoted *ibid.* xvi. (Berlin & Köln, 1929), p. 67. See also A. V. Knack, 'Die Wegbereitung einer vernunftgemässen Bevölkerungspolitik', in A. Weil, *Sexualreform und Sexualwissenschaft* (Stuttgart, 1922), p. 203.

<sup>2</sup> Davis, *op. cit.* p. 14.

<sup>3</sup> Hamilton, *op. cit.* p. 134.

<sup>4</sup> S. Ranulf, 'Die moralische Reaktion gegen neomalthusianische Propaganda in Dänemark', in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xvi. (Berlin & Köln, 1929), p. 47 *sqq.*

<sup>5</sup> S. D. Schmalhausen, *Why We Misbehave* (New York, 1928), pp. 37, 40 *sq.*



mere looks, wealth, or housekeeping ability; and answers given by students at Ohio State University mention among the essential mental qualifications in a wife a desire for and a love of children.<sup>1</sup> Dr. Hamilton's question, "Do you wish to have children?" elicited the answer "No" from only 14 men and 4 women belonging to his group of one hundred married men and one hundred married women, and the answer "No" with reservations from 6 men and no woman; while his question, "Does your spouse wish to have children?" was answered in the negative by 10 men and 18 women, and in the negative with reservations by 2 men and 3 women.<sup>2</sup>

These answers are substantially concordant with popular notions, as well as with views expressed by eminent students of the psychology of sex. According to Havelock Ellis, "most people, certainly most women, feel at moments, or at some period in their lives, a desire for children";<sup>3</sup> and in women the longing for a child "may become so urgent and imperative that we may regard it as scarcely less imperative than the sexual impulse".<sup>4</sup> Van de Velde writes: "To be a woman means to have the desire to become a mother both physically and mentally". He admits that "there are women, and presumably always have been women, although their number may be relatively very small, who feel such a strong antagonism to motherhood that they refuse to marry for this reason"; but he adds: "The absence of the maternal instinct in the modern woman is really nothing but a pose. The maternal instinct exists in spite of this, although there may be only one child. . . . Where it really is repressed,

<sup>1</sup> P. Popenoe, *Modern Marriage* (New York, 1927), p. 35 sq.

<sup>2</sup> Hamilton, *op. cit.* p. 123 sq.

<sup>3</sup> Havelock Ellis, *Views and Reviews* (London, 1932), p. 82.

<sup>4</sup> *Idem*, *Studies in the Psychology of Sex*, 'Analysis of the Sexual Instinct, etc.' (1903), p. 16.



because some women think it fashionable, or because of decadence, or love of pleasure, it will also be seen that such repression has its revenge sooner or later. A more than temporary repression of the mother instinct is, practically speaking, impossible".<sup>1</sup> It may be that Bertrand Russell was deceived by that pose when he made the contrary suggestion that so long as women were in subjection they did not dare to be honest about their own emotions, but professed those which were pleasing to the male, and that consequently, until very recently, all decent women were supposed to desire children, because many men were shocked by those who frankly admitted that they did not desire any.<sup>2</sup> He thinks that the desire for children is commoner among men than among women, and that in a very large number of modern marriages the children are a concession on the part of the woman to the man's desires. He even writes: "It is for this reason, rather than for the sake of sex, that men marry, for it is not difficult to obtain sexual satisfaction without marriage".<sup>3</sup> He seems then to forget that marriage has other advantages to offer a man than the prospect of fatherhood and the gratification of the sexual impulse. But it is quite possible that though the desire for children does not play such an important part in the thoughts of men as it does with most women, nevertheless, as Popenoe observes, "the number of men to whom this aspect of marriage appeals strongly is far greater than is often realised".<sup>4</sup> Among European peasantry it is certainly a powerful motive. The so-called *Probeheiraten*, or trial marriages, in some districts of Bavaria and the *brutkoste* of the Dutch plainsmen have in a large

<sup>1</sup> Th. H. van de Velde, *Sex Hostility in Marriage* (London, 1931), pp. 70, 76, 78.

<sup>2</sup> B. Russell, *Marriage and Morals* (London, 1929), p. 170.

<sup>3</sup> *Ibid.* p. 159.

<sup>4</sup> Popenoe, *op. cit.* p. 4.

measure the purpose of testifying the woman's capacity for bearing children.<sup>1</sup>

We now come to the third essential element in marriage: the relation between husband and wife apart from the gratification of the sexual impulse and procreation. If my theory of the origin of marriage is correct, this relation has from the beginning contained some degree of affection. In a species where the male remains with the female and takes care of her even after the pairing season has passed, it must be a feeling of this sort that accounts for it. We may assume that the tendency to feel some attachment to a being who has been the cause of pleasure, in this case sexual pleasure, is at the bottom of the marital instinct, and that the need of the species is the ultimate cause of the association between the sexual desire and affection, which is the essence of conjugal love. At the lower stages of human development conjugal affection seems to be considerably inferior to the tender feelings with which parents embrace their children,<sup>2</sup> but we must not be misled by statements to the effect that among some savages love between husband and wife is unknown. However different the love of a savage may be from that of a civilised man, we discover in it traces of the same ingredients. I have elsewhere given a long list of primitive peoples who are by no means strangers to conjugal love, and among these we find even the Australian aborigines, who generally have the reputation of being the greatest oppressors of women on earth; many authorities attest that married people among them are often much attached to each other, and continue to be so even when they grow old.<sup>3</sup>

Advancement in civilisation has not at every step

<sup>1</sup> E. H. Kisch, *Die sexuelle Untreue der Frau*, ii. (Bonn, 1918), p. 122.

<sup>2</sup> *The History of Human Marriage*, ii. 24 sq.

<sup>3</sup> *Ibid.* ii. 25 sqq.



been favourable to the development of conjugal love. In a book containing the cream of the moral writings of the Chinese, and intended chiefly for children, we read: "A wife is like one's clothes; when clothes are worn out, we can substitute those that are new".<sup>1</sup> While the Vedic singers knew no more tender relation than that between the husband and his willing, loving wife, who was praised as "his home, the darling abode and bliss in his house",<sup>2</sup> it is said that sincere mutual friendship is rarely met with in the families of the modern Hindus.<sup>3</sup> Among the Arabs, Burckhardt writes, "the passion of love is, indeed, much talked of by the inhabitants of towns; but I doubt whether anything is meant by them more than the grossest animal desire".<sup>4</sup> In Greece in the historic age the man recognised in the woman no other end than to minister to his pleasure or to become the mother of his children;<sup>5</sup> the love of women was only the offspring of the common Aphrodite, who "is of the body rather than the soul".<sup>6</sup> Both in the East and in Greece progress in civilisation widened the gulf between the sexes and tended to alienate husband and wife, because the higher culture became almost exclusively the prerogative of the men. Yet Europeans are apt to be somewhat mistaken when judging of the conjugal relations of Orientals. A factor which should be taken into account is their ideas of decency. In Morocco it is considered indecent to *show* any affection for one's wife; in the eyes of the outside world the husband should treat her with the greatest indifference. But

<sup>1</sup> *The Indo-Chinese Gleaner*, i. (Malacca, 1818), p. 164.

<sup>2</sup> A. Kaegi, *The Rigveda* (Boston, 1886), p. 15.

<sup>3</sup> J. A. Dubois, *A Description of the Character, Manners, and Customs of the People of India* (Madras, 1862), p. 109.

<sup>4</sup> J. L. Burckhardt, *Notes on the Bedouins and Wahábys* (London, 1830), p. 155.

<sup>5</sup> Cf. G. Lowes Dickinson, *The Greek View of Life* (London, 1896), p. 159.

<sup>6</sup> Plato, *Symposium*, p. 181.



this by no means implies that he is devoid of tender feelings towards her.<sup>1</sup>

Many students of the psychology of sex have emphasised the unity and transfusion of the spiritual and the bodily elements in sexual love among ourselves. Havelock Ellis writes: "Love, in the sexual sense, is, summarily considered, a synthesis of lust (in the primitive and uncoloured sense of sexual emotion) and friendship. . . . There can be no sexual love without lust; but, on the other hand, until the currents of lust in the organism have been so irradiated as to affect other parts of the psychic organism—at the least the affections and the social feelings—it is not yet sexual love. Lust, the specific sexual impulse, is indeed the primary and essential element in this synthesis, for it alone is adequate to the end of reproduction, not only in animals but in men. But it is not until lust is expanded and irradiated that it develops into the exquisite and enthralling flower of love".<sup>2</sup> "In human beings", says Dr. Beale, "the physical union of real lovers becomes the vehicle and symbol of a spiritual union which cannot in any other way be so completely effected or expressed. From the bodily coalescence of lover and beloved, from the thrill and ecstasy kindled and rekindled in that close embrace, the full mutual surrender and uttermost delight in one another, there spring emotions and sympathies that are quite unattainable save in this manner".<sup>3</sup> Bertrand Russell remarks that the sexual instinct "is not completely satisfied unless a man's whole being, mental quite as much as physical, enters into the relation. . . . Love should be a tree whose roots are deep in the earth, but whose branches extend into heaven".<sup>4</sup> Female writers also

<sup>1</sup> See my book, *Wit and Wisdom in Morocco* (London, 1930), p. 80.

<sup>2</sup> Ellis, *Studies in the Psychology of Sex*, vi. p. 133.

<sup>3</sup> G. C. Beale, *Wise Wedlock* (London [1922]), p. 57 sq.

<sup>4</sup> Russell, *op. cit.* pp. 99, 224.

point out that the sex communion between husband and wife should be "a true union of souls, not merely a physical function for the momentary relief of the sexual organs",<sup>1</sup> and that the complete act of union symbolises and actually enhances the spiritual union.<sup>2</sup>

Dr. Loewenfeld observes that sexual love is a complex emotional state which in its well-developed or, as one may say, higher form is composed of three elements: first, such as appertain to the sexual instinct, or, at least, instinctive elements originating in the sexual sphere; secondly, feelings of affection and sympathy for some individual; and thirdly, feelings of esteem, ranging from simple esteem to veneration, admiration, or even idealising. He adds that the feelings of the last-mentioned group, if very strongly developed, tend rather to diminish the sensual desire, and may easily lead to a feeling that the beloved object is debased by any attempt at satisfying the latter.<sup>3</sup> This takes us to the important fact that sexual love does not necessarily aim at the supreme satisfaction of the sexual impulse.<sup>4</sup> This impulse is an urge to sexual activity which has its seat and its irradiations in the whole body and the whole psychic personality, being largely dependent not only on the external secretions of the sex glands (sperm and egg cells), but especially on their internal secretions or hormones. And it may lead to tenderness, affection, admiration, or idealisation in regard to the individual by whom it is aroused to such a degree that it is itself

<sup>1</sup> Margaret Sanger, *Happiness in Marriage* (London, 1927), p. 140.

<sup>2</sup> Marie Stopes, *Married Love* (London, 1926), p. 94.

<sup>3</sup> L. Loewenfeld, *On Conjugal Happiness* (London, 1912), p. 164 *sqq.*

<sup>4</sup> Cf. E. Spranger, *Psychologie des Jugendalters* (Leipzig, 1924), p. 81 *sqq.*; R. Lagerborg, *Kärleksruset* (Helsingfors, 1925), p. 31 *sqq.*; Th. H. van de Velde, *Ideal Marriage* (London, 1928), p. 11 *sq.*; R. Müller-Freienfels, 'Zur Psychologie der erotischen Selektion', in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xv. (Berlin & Köln, 1928), p. 86.



pushed into the background. In a young person's first love the desire for sexual intercourse is often completely absent, indeed the thought of it may fill him with reluctance; and if he has a desire for such an act, it is directed to another person than the beloved one. On the other hand, when the sensual attraction has ceased to be felt, its spiritual effect may still remain unabated, as is the case in long and happy marriages where husband and wife are united by lasting ties of mutual love and tenderness.

Though love is frequently considered the only justifiable basis for marriage, material aspects have always played a very prominent part in it. Marriage is a community of life with everything that is implied in it, with common interests bodily and mental; as the marriage service of the Church of England states, it exists for "the mutual society, help and comfort that the one ought to have of the other", as well as for the procreation of children. In early civilisation a man will have a female companion who takes care of his house, who procures wood and water, lights and attends to the fire, prepares the food, dresses skins, makes clothes, gathers roots and berries, and among agricultural peoples very frequently cultivates the soil; and a woman wants to have a protector and supporter. The various occupations of life are divided between the sexes according to rules, the formation of which has no doubt been more or less influenced by the selfishness of the stronger sex, but which on the whole are in general conformity with the indications given by nature;<sup>1</sup> and so they have always, in a large measure, remained. Among ourselves, also, the desire to enhance one's own comfort and to have a home of one's own with a companion to look after one's interests, is an important motive for marriage. Love enthusiasts

<sup>1</sup> See E. Westermarck, *The Origin and Development of the Moral Ideas*, i. (London, 1912), p. 635 sq.



are apt to look down upon so prosaic a motive, and even declare that marriages should be continued only so long as love remains. But there is sufficient evidence that love offers no sufficient guarantee for a happy married life.

Economic considerations are certainly of great importance at the conclusion of a marriage. Poverty may cause much hardship to the couple, and may prevent them from having children, or if they have any, from giving them a proper education. Even some amount of wealth is not to be despised. It may increase the enjoyment of life in various ways; it may give the spouses leisure for some useful kind of work—scientific, literary, artistic, or social—which yields no pecuniary gain; and it may enable them to accomplish the education of their children. No wonder, then, that economic circumstances influence very largely the choice of a partner. Iwan Bloch observes that the economic question is the main determining influence among the classes who feel it their duty to keep up a particular kind of appearance, namely, the aristocracy, the upper middle classes, and the officers in the army, and that the predominance of mercenary marriages among the Jews is a well-known fact. But he also asks: "Where are money marriages more frequent than they are among our sturdy German peasants, with whom everything conventional has freest possible play?"<sup>1</sup> Among the peasantry both of Germany<sup>2</sup> and other European countries<sup>3</sup> economic equality between the parties is considered an essential condition for the conclusion of a marriage; in the West of Ireland, for

<sup>1</sup> I. Bloch, *The Sexual Life of Our Time* (London, 1908), p. 212 sq.

<sup>2</sup> E. H. Meyer, *Deutsche Volkskunde* (Strassburg, 1898), p. 166.

<sup>3</sup> For Sweden, see Nicolovius (N. Lovén), *Folklifvet i Skytts Härad i Skåne* (Lund, 1868), p. 121; F. J. E. Eneström, *Finvedsbornas seder och lif* (Halmstad, 1911), p. 78.

instance, "a man never thinks of a girl who has not sufficient money to be his equal".<sup>1</sup>

It would be unfair to include such marriages in the censure by which some eminent writers on sex pass upon marriages of convenience. Havelock Ellis writes: "A man who marries for money or for ambition is departing from the biological moral ends of marriage. A woman who sells herself for life is morally on the same level as one who sells herself for a night".<sup>2</sup> It would seem that wealth is better fitted than poverty for the biological purposes of procreation and the rearing of children, and, as Marañón remarks, a man's money is among ourselves a biological substitute for his physical ability in early times as a means of supporting his family.<sup>3</sup> And how do the severe strictures upon mercenary marriages square with the statements that the community has no right to interest itself in the sexual behaviour of its members until a child is born or conceived, and that "it is an impertinence, if not an outrage, to seek to inquire into it"?<sup>4</sup> Why, then, should anybody have a right to pass a moral judgment on the motives that induce a man and a woman to marry, whatever his opinion about those motives may be? These are often very complex, and monetary considerations by no means exclude other reasons; they are not quite incompatible even with love. Olga Knopf remarks: "No choice is ever all for love or all for convenience. . . . Even in love we understand that there is a valuation of the partner and

<sup>1</sup> T. P. U. Blake, 'Matrimonial Customs in the West of Ireland', in *Folk-Lore*, xviii. (London, 1907), p. 78.

<sup>2</sup> Ellis, *Studies in the Psychology of Sex*, vi. 366.

<sup>3</sup> G. Marañón, *Tres ensayos sobre la vida sexual* (Madrid, 1927), pp. 53, 61 sq.

<sup>4</sup> Ellis, *op. cit.* vi. 417; A. Forel (*Sexuelle Ethik* [München, 1906], p. 34) also condemns money marriages and prostitution as immoral, but regards all other relations between the sexes as morally indifferent if nobody is injured by them.



beneath the blindness of love there is often much calculation".<sup>1</sup> Dr. Hamilton quotes the cynical saying that "almost any woman can love almost any man if he has plenty of money and a disposition to spend it for her benefit", and adds that his own findings "do not wholly refute this adage".<sup>2</sup>

The three essential elements in marriage are all sources of much happiness. The gratification of the sexual impulse not only gives intense momentary pleasure, but exercises also a wholesome influence on body and mind, and may lay the foundation of that exalted feeling of love which is the chief condition for a happy marriage. The community of life between husband and wife may in various ways be a blessing to both. It offers many advantages that are denied solitary men and women. It is a safeguard against loneliness; it is apt to be conducive not only to material comfort but to spiritual edification, to intensified life, to fulfilment of personality. Children increase the happiness of married life both as objects of parental affection and as binding links of love between husband and wife. Their presence may even induce the parents to carry on their marriage when personal feelings between them would not do so. Divorces are considerably more frequent in cases where there are no children or only one child. In England, during the period 1899-1930, never less than 60 per cent. of divorce petitions concerned families with no child or one only, while between 38 and 43 per cent. came from childless families.<sup>3</sup> In the United States almost two-thirds of the divorces are recruited from the 17 per cent. childless marriages, and an additional 20 per cent. of the divorces, or the majority of the remainder, come

<sup>1</sup> Olga Knopf, *The Art of Being a Woman* (London, 1932), p. 141.

<sup>2</sup> Hamilton, *op. cit.* p. 513.

<sup>3</sup> D. V. Glass, 'Divorce in England and Wales', in *The Sociological Review*, xxvi. (London, 1934), p. 306.



from that comparatively small category, the one-child marriage.<sup>1</sup> In Switzerland, two-fifths of the total number of divorces are said by Glasson to take place between married people who have no children, though the sterile marriages only amount to one-fifth of the number of marriages.<sup>2</sup>

But while those factors which we have now considered—the sexual impulse, the community of life, and the presence of children—may be conducive to much happiness in married life, they may also be quite the reverse. And it is the unhappy marriages that have in particular impressed those who nowadays speak of the decay of marriage and the disintegration of the family.

<sup>1</sup> A. Cahen, *Statistical Analysis of American Divorce* (New York, 1932), p. 115. Cf. W. F. Willcox, *The Divorce Problem* (New York, 1891), p. 34.

<sup>2</sup> E. Glasson, *Le Mariage et le divorce* (Paris, 1880), p. 470.

## CHAPTER III

### MATRIMONIAL UNHAPPINESS—SEXUAL MALADJUSTMENT

THOSE who have tried to estimate the comparative prevalence of unhappiness in modern marriages have come to very different conclusions.

Dr. Norman Haire writes: "Any moderately intelligent person who goes about the world with his eyes open—who is willing to face the truths of life even if they are disagreeable—must be struck by the appalling frequency of unhappiness in marriage. I can find no reason to believe that my circle of friends and acquaintances is an exceptional one, and if I am to judge by them I must conclude that a large majority of marriages are unsuccessful. . . . Speaking broadly, I should say that only one marriage in four may be judged as even tolerably successful, and a very much smaller proportion can fairly be considered as really happy". But he adds: "On careful reflection I fear that I have given an unduly large proportion of successes, and an unduly small proportion of failures".<sup>1</sup>

A civil servant in Stockholm told a Swedish professor that he did not know a single bright and harmonious marriage among all his acquaintances; but the latter answered that his own experience was different. Yet an inquiry made by a newspaper concerning Swedish marriages led to the conclusion that more than one-half

<sup>1</sup> Norman Haire, *Hymen or the Future of Marriage* (London, 1928), p. 8 sq.

of them must probably be regarded as unhappy.<sup>1</sup> Thomas Mann writes: "Truly one may, even without malice, easily gather the impression that to-day ninety per cent. of all marriages are unhappy".<sup>2</sup> Bertrand Russell maintains that among civilised peoples in the modern world "not many marriages after the first few years are happy".<sup>3</sup> Dr. Everett thinks that probably from one-third to one-half of all men and women who marry find themselves unhappy sooner or later, not to mention those who are simply moderately contented. According to Dr. Tenenbaum, "one rarely finds a couple that enjoys real happiness, unless it be a sort of resigned acquiescence which, in itself, represents a mute protest against the implications of marriage".<sup>5</sup> An American judge points out that statistics show divorce to occur in about one in six marriages in the United States, which implies that there would be about 167 publicly admitted failures in 1000 marriages. "Against this", he says, "I must oppose my observation that if there are 167 truly successful marriages in the 1000 I should consider it a very good average!"<sup>6</sup> Two other American writers have much more cheerful opinions about the marriages of their own country. Rafford Pyke thinks that only a very small proportion of them are really unhappy.<sup>7</sup> R. O. Lang had 7412 marriages rated by persons who knew the couples very well, with the result that 72 per cent. were declared to

<sup>1</sup> T. Bolin, *Äktenskapets kris och förnyelse* (Stockholm, 1934), pp. 5, 6, 8.

<sup>2</sup> Th. Mann, 'Marriage in Transition', in H. Keyserling, *The Book of Marriage* (New York [1926]), p. 258.

<sup>3</sup> B. Russell, *Marriage and Morals* (London, 1929), p. 110.

<sup>4</sup> M. S. Everett, *Marital Hygiene* (London, 1933), p. 139.

<sup>5</sup> J. Tenenbaum, *The Riddle of Sex* (London, 1930), p. 183.

<sup>6</sup> G. A. Bartlett, *Men, Women, and Conflict* (New York & London, 1931), p. 64.

<sup>7</sup> R. Pyke, 'Husbands and Wives', in *The Cosmopolitan*, xxxii. (New York, 1902), p. 613.



be happy, and only 9 per cent. unhappy.<sup>1</sup> Dean Inge believes that " marriage is the best thing in human life, and that most marriages are happy ".<sup>2</sup>

As to the unfavourable estimates, it has been argued that people are easily misled concerning the actual marriage situation by the fact that the smoothly going and satisfactory marriages do not obtrude themselves upon public attention.<sup>3</sup> They have no sensational or dramatic quality. They are little spoken of, they do not figure in the newspapers. It is not about them that the stage, the screen, and the novelist build their plots, but it is the marriages in which there is conflict, suffering, cruelty, unfaithfulness, desertion, or the like that hold the stage and come to the public eye. Moreover, an outsider is often quite unable to know whether a marriage is happy or unhappy. Much unhappiness may exist in homes which are outwardly harmonious, but there is also often conjugal happiness in cases where the onlooker would not have expected it. Such points have to be decided by the feelings of those concerned.

Of the one hundred married men and one hundred married women studied by Dr. Hamilton, 109 stated that their marriages were successful and 21 gave a qualified denial that they were unsuccessful. They were asked: " If by some miracle you could press a button and find that you had never been married to your husband (or wife), would you press the button? " One hundred and thirty of them said " No ", 16 said " No " with qualification, and only 28 said, without hedging, that

<sup>1</sup> R. O. Lang, *The Rating of the Degree of Happiness or Unhappiness in Marriage*, Thesis for the Master of Arts Degree at the University of Chicago, 1932 (unpublished), quoted by M. F. Nimkoff, *The Family* (Cambridge, Mass., 1934), p. 376.

<sup>2</sup> W. R. Inge, 'Morals and Manners of Three Epochs', in the *Evening Standard*, September 26, 1934.

<sup>3</sup> Pyke, *loc. cit.* p. 613; M. J. Exner, *The Sexual Side of Marriage* (London, 1932), p. 172.

they would press the button. They were also asked: "Knowing what you now know, would you wish to marry if you were unmarried?" One hundred and fifty-one said "Yes", 15 "Yes" with qualification, and only 13 of the 200 said "No" without qualification.<sup>1</sup> Of 988 married college women belonging to the Davis group 872 answered unequivocally that their married lives had been happy, and only 116 that theirs had been either partially or totally unhappy.<sup>2</sup> It has been remarked that these figures must not be considered representative of the general population, considering that the Davis study had as subjects women who possessed a comparatively high degree of intelligence and other qualities which ought to be conducive to success in marriage.<sup>3</sup> But Rafford Pyke thinks that the really unhappy American marriages are chiefly found just among the more cultured classes, in which the movement of expansion in women's interests and lives is taking place, and marriage to-day is thus becoming more and more dependent for its success upon the adjustment of psychical conditions.<sup>4</sup> The large percentage of successful marriages among the women of the Davis group is presumably connected with the fact that marriages consummated between college students are on the whole more successful than marriages generally. In one particular discussion of this matter it is reported that only one in every 75 marriages among college couples ended in divorce during a recent period of years, when there was one divorce for every seven marriages in the United States as a whole.<sup>5</sup> As

<sup>1</sup> G. V. Hamilton, *A Research in Marriage* (New York, 1929), pp. 74, 69, 70, 553 sq.

<sup>2</sup> Katharine B. Davis, *Factors in the Sex Life of Twenty-two Hundred Women* (New York & London, 1929), p. 39.

<sup>3</sup> Everett, *op. cit.* p. 139 n. 1.

<sup>4</sup> Pyke, *loc. cit.* p. 613.

<sup>5</sup> 'Co-Education Makes Good Marriages', in *Scribner's Magazine*, xc. (New York, 1931), p. 519.



Dr. Nimkoff observes, the chances for a successful marriage are greater if the two persons come to their new experience with a fund of common interests. "If college marriages are more successful than marriages generally, this is chiefly due to the fact that the two persons develop much the same tastes as the result of their common college life. The college experience offers an excellent common situation for prospective mates, but other common situations may just as readily conduce to common interests".<sup>1</sup>

Some statistics from Russia may also be worth quoting. In 1908 a medical society there appointed a committee to study, by means of questionnaires, the sexual life of the female students of the University of Moscow. As the undertaking, however, was considered by the Government to be dangerous to society, the material thus collected was confiscated by the police, but some of it was saved and afterwards published under the present regime. One hundred and fifty-four students looked upon marriage as indispensable to their happiness, while 104 thought that they might find an equivalent to it in some kind of work; and in the former group the percentage of married women was greater than that of unmarried ones.<sup>2</sup> Of 550 women who were studying at the University of Kazan in the winter term of 1922-23, 55 per cent. of the unmarried ones saw their future happiness in marriage, 42 per cent. in durable sex relations, and 3 per cent. in transitory ones; but only 40 per cent. of the married women were in favour of marriage, while 53 per cent. "allowed also extra-matrimonial intercourse".<sup>3</sup> Among 1162 male and

<sup>1</sup> Nimkoff, *op. cit.* p. 377. Cf. *infra*, p. 82.

<sup>2</sup> S. Weissenberg, 'Das Geschlechtsleben der russischen Studentinnen', in *Zeitschrift für Sexualwissenschaft*, xi. (Bonn, 1924), p. 11.

<sup>3</sup> *Idem*, 'Weiteres über das Geschlechtsleben der russischen Studentinnen', *ibid.* xii. (1925), p. 176.



332 female students belonging to various institutions in Kharkov in 1926, of whom the unmarried ones and those who were or had been married were almost exactly equal in number, 88·3 per cent. of the men and 96·2 per cent. of the women looked upon marriage and durable sex relations as the highest forms of sexual life; and of those who preferred marriage the widowers presented the highest percentage.<sup>1</sup> The only difference between marriages and durable sex relations is that the former are registered and the latter not; both kinds of unions can be dissolved if either party wishes it.

A vigorous and harmonious sex life is one of the corner-stones of the temple of love and marriage, while relative or absolute impotence of the husband and frigidity of the wife are highly important causes of marital discord. The popular impression that women tolerate sexual inadequacy in their husbands less well than men tolerate it in their wives may have some foundation in fact;<sup>2</sup> but the frigidity of the woman makes the man's pleasure tasteless nourishment which barely appeases his hunger. No highly civilised or sensitive man appreciates union with a woman who remains unmoved and listless in his arms; the merely passive, submissive, and frigid wife will speedily fail to attract him, and as soon as sexual attraction is extinguished sexual repulsion easily manifests itself, leading to enmity or even intense hatred. In any case the spiritual side of marriage would have no chance to develop while the natural side is out of gear.<sup>3</sup>

The frigidity of the wife is very frequently due to the husband's lack of skill or consideration, or to his

<sup>1</sup> Z. A. Gurewitsch and F. J. Grosser, 'Das Geschlechtsleben der Gegenwart', *ibid.* xv. (Berlin & Köln, 1929), p. 545.

<sup>2</sup> Hamilton, *op. cit.* pp. 83, 532, 537, 538, 542.

<sup>3</sup> Cf. O. Adler, *Die mangelhafte Geschlechtsempfindung des Weibes* (Berlin, 1911), p. 183 sq.; G. C. Beale, *Wise Wedlock* (London [1922]), pp. 11, 81.

ignorance. It has been said that "if men were to give to their married life one-tenth of the trouble and thought they give to their business, the majority of marriages would be happy".<sup>1</sup> "Marriage is a science", says Balzac. He compares the average husband to an orang-utan trying to play the violin, and adds: "Love is the most melodious of all music, and a taste for it is inborn in us. Woman is a delightful instrument of pleasure, but it is necessary to know her trembling chords, the attitude in which to approach her, and the difficult changes of fingering needed for a delicate keyboard. How many oranges—men, I mean, marry without knowing what a woman is! . . . Almost all married in the most profound ignorance, both of women and of love; they began by forcing the door of a strange house, and they expect to be well received in the drawing-room".<sup>2</sup>

Numbers of married women are left cold or unsatisfied because their husbands give no heed to the fact that in coitus the orgasm tends to occur more slowly in women than in men. Of the hundred married women belonging to the Hamilton group 37 stated without qualification that their husbands' orgasms occurred too quickly for their own (the women's) pleasure.<sup>3</sup> This point is much better understood in the East than in the West, the prolongation of the man's excitement, in order to give the woman

<sup>1</sup> Robert Haas, quoted by Th. H. van de Velde, *Ideal Marriage* (London, 1928), p. 142. On the subject in question, see *ibid.* p. 9 and *passim*; Havelock Ellis, *Studies in the Psychology of Sex*, vi. (Philadelphia, 1923), ch. xi., 'The Art of Love'.

<sup>2</sup> H. de Balzac, *Physiologie du mariage*, Méditation v. (English translation [London, 1925], p. 52).

<sup>3</sup> Hamilton, *op. cit.* pp. 168, 205. Cf. R. L. Dickinson and L. Beam, *A Thousand Marriages* (London, 1932), p. 61 *sq.*; Marie Stopes, *Married Love* (London, 1926), pp. 93, 111; Margaret Sanger, *Happiness in Marriage* (London, 1927), p. 168; W. Liepmann, *Psychologie der Frau* (Berlin & Wien, 1920), p. 174.



time for orgasm, being carefully observed both by Moslems and Hindus.<sup>1</sup> In the *Kama Sutra* of Vatsayana, written nearly two thousand years ago and considered a gem in Hindu erotic literature, we read: "Males, when engaged in coition, cease of themselves after emission, and are satisfied, but it is not so with females. . . . If a male be long-timed, the female loves him the more, but if he be short-timed, she is dissatisfied with him".<sup>2</sup>

In another respect, also, the husband should have patience in order to make himself acceptable to his wife: he should court her. An instinctive impulse to prevent the male's approach is a feminine characteristic found in mankind, as well as among the lower animals, and in order to overcome it the male has to arouse in her an emotional condition which leads her to surrender herself to him. This is done by the process of courtship, which precedes a marriage, but is not definitely brought to an end by it: it has to be repeated, in some measure, before every act of coition. Vatsayana writes: "The husband who would like to keep the love of his wife all to himself, should press with nails or scratch with them the different erotic parts of her body as well as kiss all those parts every time he seeks an embrace. By these means the wife gets prepared for the sexual act, reaches her orgasm quickly and loves her husband fervently". He is of opinion that all the parts which can be kissed should also be slightly bitten, but so gently as to produce only pleasurable sensation in the woman and no discomfort.<sup>3</sup> Balzac says that "a husband's own interest, at least as much as his honour, forbids him the indulgence of any pleasure which he has not had the talent to make

<sup>1</sup> See Ellis, *op. cit.*, 'Analysis of the Sexual Impulse', etc. (1903), p. 187 sq.

<sup>2</sup> Vatsayana, *The Kama Sutra* (Amritsar, 1930), p. 73.

<sup>3</sup> *Ibid.* pp. 99, 107 sq.



attractive to his wife ”.<sup>1</sup> We find similar remarks made by female writers. According to Ellen Key, “every developed modern woman wishes to be loved not *en mâle* but *en artiste* ”.<sup>2</sup> Marie Stopes writes: “A man does not woo and win a woman once for all when he marries her: he must woo her before every separate act of coitus, for each act corresponds to a marriage as other creatures know it ”.<sup>3</sup> Sofie Lazarsfeld asked many women what seemed to them to be the man’s best and most valuable quality during intercourse, and though the answers she received were very different in detail, there was always one common denominator, so to speak, namely, intensity of wooing, together with tenderness.<sup>4</sup>

The first night of a marriage is a particularly critical occasion. Here again I may refer to the wisdom of Vatsayana, who thinks that if the husband completely wins over his bride in a loving manner on the first night, he wins her love for the whole life. “The unseasoned girl is nearly always very bashful and the proper way to obtain her consent for sexual union is through kind words and showering warm kisses upon her. The husband should also repeatedly promise his life-long love to her. If in the storm of his passion the husband uses brute force to overcome the person of his young wife, it will seriously hurt her feelings and she may never afterwards be made to love him with the same love as a good wife should have for her husband ”.<sup>5</sup> Balzac utters a similar warning: “Never begin marriage by an assault. . . . The fate of a marriage is decided in the first night ”.<sup>6</sup> It has often been pointed out that

<sup>1</sup> Balzac, *op. cit.*, Méditation v.

<sup>2</sup> Ellen Key, *Love and Marriage* (New York & London, 1911), p. 83 sq.

<sup>3</sup> Stopes, *op. cit.* p. 88.

<sup>4</sup> Sofie Lazarsfeld, *Rhythm of Life* (London, 1934), p. 114.

<sup>5</sup> Vatsayana, *op. cit.* p. 127.

<sup>6</sup> Balzac, *op. cit.*, Méditation v.

the defloration performed by an unskilful and over-eager husband is a frequent cause of lasting frigidity in the wife.<sup>1</sup> Mrs. Sanger says that "the importance of the first step into the conjugal life cannot be over-emphasised. Initiation demands all the foresight, self-control and skill that the bridegroom can summon to his aid. . . . After the horrors of a bridal night, women have been known to leave inexperienced husbands for ever. . . . Through inexperience, ignorance, and a lack of self-control, due to excitement, many bridegrooms have recklessly thrown away all possibilities of subsequent happiness".<sup>2</sup> Fortunately, however, such horrors of the bridal night seem to be exceptions rather than the rule. One of Dr. Hamilton's questions was: "Did you feel any reluctance or aversion to the act the first time you had sex intercourse with your husband?" Sixty-five of the hundred women answered it in the negative. Another question was: "Did your wife show aversion to the sex act the first time?" Seventy-one of the hundred men answered it in the negative.<sup>3</sup> Sixty-one of the women said that the first sex act did not cause them much pain, or that "it was painful but not seriously so", or something similar. Fifty-seven said that it neither frightened, disgusted, nor surprised them; but only seventeen said, without reservation, that they enjoyed it.<sup>4</sup> Among the Moscow students mentioned above, the first coitus caused rapture and enhanced self-feeling in 28, but disgust, anxiety, and depression in 46.<sup>5</sup> In none of the cases now referred to is it said that the first coitus took place during the first night; it is often postponed, maybe even

<sup>1</sup> Adler, *op. cit.* p. 157 sq.; Ellis, *op. cit.* 'Analysis of the Sexual Impulse', etc., p. 189, vi. 526; P. Bjerre, *Äktenskapets omdaning* (Stockholm, 1928), p. 163.

<sup>2</sup> Sanger, *op. cit.* p. 89.

<sup>3</sup> Hamilton, *op. cit.* p. 372 sq.

<sup>4</sup> *Ibid.* p. 148 sq.

<sup>5</sup> Weissenberg, in *Zeitschrift für Sexualwissenschaft*, xi. 12.



for months.<sup>1</sup> It is not always, however, the husband's fault if the wedding-night becomes a tragedy. Of 65 women belonging to the Hamilton group who had not had pre-marital intercourse, 23 answered in the negative his question, " Were you prepared by instruction before marriage to expect the sex act your wedding-night? " and 11 answered " No " with reservations.<sup>2</sup>

It is said that in normal women there is a periodical ebb and flow of sexual desire which only too often escapes the husband's observation or his care. According to Marie Stopes, there are fortnightly periods of desire, arranged so that one period comes always just before each menstrual flow, and the other period comes about eight or nine days after the close of menstruation. She maintains that this fortnightly rhythm fundamentally affects the marriage relation, and that a husband who desires lasting and mutual happiness in marriage should carefully study his wife, observe how far she has a normal rhythm, and how far she has little personal traits.<sup>3</sup> Margaret Sanger likewise observes that the sexual desire in women consists of a series of wave-like periods determined by the monthly cycle. She says that " authorities and investigators are not in complete agreement upon the point when desire rises to its highest point. This undoubtedly varies in different women, according to age, climate, and general environment. . . . Intelligent husbands should make a thoughtful study of the inner nature of their wives and seek to carry to consummation their own amorous desires on the rising movement of this wave ".<sup>4</sup>

If sexual incompatibility is often due to the ignorance of the husband, it is also in no small measure due to the ignorance of the wife; although, as Montaigne

<sup>1</sup> Adler, *op. cit.* p. 158.

<sup>2</sup> Hamilton, *op. cit.* p. 146.

<sup>3</sup> Stopes, *op. cit.* pp. 67, 73.

<sup>4</sup> Sanger, *op. cit.* p. 152 sq. See also K. F. Friedlaender, *Die Impotenz des Weibes* (Leipzig, 1921), p. 13.



said, women may know more of love than men can teach them, because it is a discipline that is born in them.<sup>1</sup> A highly educated lady told Marie Stopes that, when she was about eighteen, she suffered many months of agonising apprehension that she was about to have a baby because a man had snatched a kiss from her lips at a dance;<sup>2</sup> and the belief that a kiss on the lips from a man may cause pregnancy is also found among girls in the United States, France, and Austria.<sup>3</sup> There are said to be English girls who, when they marry, are unaware that married life will bring them into physical relations with their husbands which are fundamentally different from those with their brothers.<sup>4</sup> An American doctor writes: "Many a woman has told me that she expected from marriage a prolongation of her betrothal days, with more intensity; that a bunch of flowers or a box of sweets would be the daily contribution of her husband to her happiness, and that her responsibilities would be confined to keeping the flowers in fresh water and the sweets in appropriate bowls".<sup>5</sup> Of the 992 educated married women belonging to the Davis group who answered the question, "Had you been at all adequately prepared by instruction for the sex side of marriage?" 438 stated that they had no preparation at all; and many of those who answered the question in the affirmative, altogether 554, or 55·8 per cent., revealed by their answers how inadequate were their notions concerning "adequate preparation". Some thought a knowledge of contraception all that was wanted, and a few mentioned the duty of a wife to

<sup>1</sup> Montaigne, *Essais*, book iii. ch. 5.

<sup>2</sup> Stopes, *op. cit.* p. 52 sq.

<sup>3</sup> Olga Knopf, *The Art of Being a Woman* (London, 1932), p. 101; Ellis, *op. cit.* vi. 79; *idem*, *More Essays of Love and Virtue* (London, 1931), p. 5 sq.

<sup>4</sup> Stopes, *op. cit.* p. 52.

<sup>5</sup> J. Collins, *The Doctor Looks at Love and Life* (London, 1926), p. 41.

submit to her husband as a satisfactory basis for married life.<sup>1</sup> The average age of all those women was thirty-eight, so that their youth belonged to a period when the knowledge of matters relating to sex was even less than it is at present. Nowadays there is more instruction in this respect; in some countries, as Germany and the United States, public lectures are given on sexual hygiene;<sup>2</sup> the University of Königsberg has a chair of sexual science, Berlin its Institute of the same science.<sup>3</sup> The movement of enlightenment really commenced in the eighteenth century,<sup>4</sup> although it afterwards came to a standstill. Musitanus' book, *De morbis mulierum tractatus*, published in 1709, anticipated even in little details Van de Velde's present-day attempts to teach married people the A B C of sex.

It is to be hoped that increased enlightenment will, to some extent, diminish marital unhappiness. It was recognised to do so already in ancient India, where Vatsayana expressed the opinion that ignorance of how to perform the sexual act in young men leads to many family disasters and that, consequently, all young people who are about to marry should be taught this science in all its details.<sup>5</sup> If we compare the women in the Davis group who considered their marriages happy with those who considered them unhappy, the difference in the percentages of women who had, and those who had not, received specific preparation for the sex side of marriage certainly suggests that proper preparation is a factor for happiness;<sup>6</sup> and so also the women

<sup>1</sup> Davis, *op. cit.* p. 62 *sqq.*

<sup>2</sup> Ellis, *Studies in the Psychology of Sex*, vi. 83; H. K. Hollister, 'Sex Education in the Y.M.C.A.', in *Birth Control Review*, 1931 (New York), p. 207 *sq.*

<sup>3</sup> Norman Haire, *op. cit.* p. 80. P.S. Recently suppressed.

<sup>4</sup> H. Vorwahl, 'Die Sexualität im Zeitalter der Aufklärung', in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xv. (Berlin & Köln, 1929), p. 555 *sqq.*

<sup>5</sup> Vatsayana, *op. cit.* p. 135.

<sup>6</sup> Davis, *op. cit.* p. 67.



belonging to the Dickinson-Beam group who had received pre-marital examination and instruction were more generally successful in making their adaptations in marriage than were those who had not had such professional assistance.<sup>1</sup> At the same time, however useful such instruction may be, we must not forget the difference between knowledge and behaviour. Dr. Hamilton says he has encountered a discouragingly large number of spouses who have failed to obtain any substantial and lasting relief from sexual maladjustments by reading and attempting to profit by the always optimistic literature of erotology.<sup>2</sup>

The sexual impulse also endangers marriage through its deceitfulness: even when raised to the rank of love it frequently leads to early marriages that soon come to an unhappy end. It is not quite so blind as it is proverbially said to be. It is stimulated by useful qualities in the opposite sex: by physical beauty, which implies the full and healthy development of those visible properties that are essential to the human organism, or to the sex, or to the race. They are all the outward manifestations of physical perfection or fitness, and the instinctive preference for them is therefore evidently within the power of natural selection.<sup>3</sup> But they are useful in connection with the propagation of the species, as tending to produce a vigorous and healthy offspring; on the other hand, they are no guarantees for lasting unions between the sexes. Personal appearance may also excite the sexual instinct as expression of mental qualities; emotional, moral, and intellectual qualities may act as stimulants by evoking affection, approbation, or admiration. But under the influence of an impetuous sexual impulse

<sup>1</sup> Dickinson and Beam, *op. cit.* p. 85.

<sup>2</sup> Hamilton, *op. cit.* p. 159.

<sup>3</sup> See E. Westermarck, *The History of Human Marriage*, ii. (London, 1921), p. 4 *sqq.*



such qualities are easily exaggerated beyond all reason, and the beloved person acquires, in the imagination of the lover, an immeasurable superiority over all others. He is seen, not as he is, but as he appears irradiated by a delusive light.

Love-matches, especially early ones, easily come to grief. This is a very common observation.<sup>1</sup> Montaigne writes: "I see no marriages where the conjugal intelligence sooner fails, than those that we contract upon the account of beauty and amorous desires; there should be more solid and constant foundation, and they should proceed with greater circumspection; this furious ardour is worth nothing. Those who think they honour marriage by joining love to it, do, methinks, like those who, to favour virtue, hold that nobility is nothing else but virtue."<sup>2</sup> Balzac asks: "What sensible father would think of marrying his son at twenty? The danger of these precocious unions is too well known. It seems that marriage is the opposite of all natural acts, since it demands a special maturity of reason. Everyone knows the saying of Rousseau: 'There must always be a period of licence, at one age if not at another; a leaven is only bad which ferments too soon or too late'. And what mother would risk her daughter's happiness by exposing her to the risk of this fermentation, when it is not past and over?"<sup>3</sup>

<sup>1</sup> See *e.g.* R. Michels, *Sexual Ethics* (London & Felling-on-Tyne, 1914), p. 170 *sq.*; Ellis, *Studies in the Psychology of Sex*, vi. 378 *sq.*, vii. (1928), p. 517; H. Keyserling, 'The Correct Statement of the Marriage Problem', in *The Book of Marriage* (New York [1926]), p. 6; Bjerre, *op. cit.* p. 142; Russell, *op. cit.* p. 221; A. Moll, *Handbuch der Sexualwissenschaften* (Leipzig, 1912), p. 439; R. Müller-Freienfels, 'Zur Psychologie der erotischen Selektion', in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xv. (Berlin & Köln, 1928), p. 101; Grete Meisel-Hess, *The Sexual Crisis* (New York, 1917), p. 54.

<sup>2</sup> Montaigne, *op. cit.* book iii. ch. 5 (English translation, iii. [London, 1877], p. 84).

<sup>3</sup> Balzac, *op. cit.*, Méditation iv. (English translation, p. 44).

Schopenhauer quotes in support of his own opinion the Spanish proverb, " Quien se casa por amores, ha de vivir con dolores " (" He who marries for love has to live in sorrow ").<sup>1</sup> Lord Beaconsfield wrote in his younger days: " All my friends who have married for love and beauty either beat their wives or live apart from them. This is literally the case. I may commit many follies in life, but I never intend to marry for ' love ', which I am sure is a guarantee of infelicity ".<sup>2</sup> " It is a well-known fact ", says Bloch, " that . . . marriages of reason are often more enduring than love-marriages. This depends upon the nature of human love, which is by no means inalterable, but changes in accordance with the various developmental phases of the individual, needs new incitements and new individual relationships. . . . All those who are well acquainted with humanity, all poets and psychologists, are in agreement respecting the fugitive character of youthful love. For this reason they advise against marriage concluded during the passion of early youth ".<sup>3</sup> Loewenfeld points to cases of so-called " marriages of convenience ", which had in the first instance been entered into without any expectation of marital happiness, and yet in the course of years took on a form that converted connubial fellowship into a source of purest conjugal happiness for both parties concerned.<sup>4</sup> Though love is commonly considered to be the proper motive for a marriage, it is, after all, more important that the parties should love each other after marriage than before.

In France it is suitability rather than sexual passion that is regarded as the best foundation for marriage,

<sup>1</sup> A. Schopenhauer, *Die Welt als Wille und Vorstellung*, ii. (*Sämmtliche Werke*, iii. [Leipzig, 1916]), p. 640.

<sup>2</sup> Quoted by A. Maurois, *Disraeli* (London, 1929), p. 67.

<sup>3</sup> I. Bloch, *The Sexual Life of Our Time* (London, 1908), p. 204.

<sup>4</sup> L. Loewenfeld, *On Conjugal Happiness* (London, 1912), p. 19.



and the parents have quite a great deal to say in the matter. There and in other Latin countries the Roman notions of paternal rights and filial duties have to some extent survived throughout the Middle Ages and till modern times. According to the French *Code Civil*, a son under twenty-five and a daughter under twenty-one could not, until 1907, marry without the consent of their parents;<sup>1</sup> and between the ages of twenty-one and thirty they must still ask for it, although, if it is refused, the matter can be regulated by means of an act before a notary, and in case the consent is not given within thirty days the marriage can take place without it.<sup>2</sup> Van de Velde says that "quite a number of modern men and women have regretfully had to admit to themselves, during the course of their marriage, that the victory they gained once over their parents' opposition has led to their own unhappiness".<sup>3</sup> But there is nothing that "Modern Youth" would oppose more violently than any attempt on the part of their parents to interfere with their sex life. The economic obstacle to early marriage may be to some extent removed by contraception, and on the other hand contraception may also be a remedy for it by facilitating non-matrimonial intercourse. Timerding advocates easier divorce for a couple who have married early in life.<sup>4</sup> Others think that trial unions of some kind or other will, more frequently than at present, help to put off marriage till a later age.

A peculiarity of the sexual instinct which creates much disturbance in married life is its taste for variety. It is dulled by long familiarity and stimulated by

<sup>1</sup> *Code civil*, art. 148.

<sup>2</sup> *Ibid.* arts. 148-151, 154.

<sup>3</sup> Th. H. van de Velde, *Sex Hostility in Marriage* (London, 1931), 147.

<sup>4</sup> H. E. Timerding, quoted by K. Finkenrath, 'Das Problem der ledigen Frau', in *Zeitschrift für Sexualwissenschaft*, xii. (Bonn, 1925), p. 181.



novelty. This is true both of animals and men. Montaigne wrote: "I was fain to turn out into the paddock an old stallion, as he was not to be governed when he smelt a mare: the facility presently sated him as towards his own, but towards strange mares, and the first that passed by the pale of his pasture, he would again fall to his importunate neighing and his furious heats as before".<sup>1</sup> Mr. Heape thinks that all breeders will agree that animals brought into contact with strangers experience increased sexual stimulation.<sup>2</sup> Dr. Hamilton, basing his observations on eighteen macaques and two baboons at his laboratory in California, states that continuous confinement of one male with one female resulted in a marked diminution of sexual enthusiasm in both, particularly in the male, a condition which the animals sought to remedy by special stimulations; whereas vigour was immediately restored by supplying each with a new mate.<sup>3</sup>

There is a saying that "marriage is the death of love", and this may be true enough if by love is meant sensual desire; as in the frivolous French ditty:

Quand on est en ménage  
On se voit sans désir,  
Mais hors de mariage  
Il fait toujours plaisir.<sup>4</sup>

If love is taken in this sense, Dr. Bloch may be right in stating: "The eternal uniformity of daily companionship puts love to sleep, damps its ardour, and even gives

<sup>1</sup> Montaigne, *op. cit.* book ii. ch. 15 (English translation, ii. [London, 1905], p. 330).

<sup>2</sup> W. Heape, *Sex Antagonism* (London, 1913), p. 63.

<sup>3</sup> G. V. Hamilton (in *Journal of Animal Behavior*, iv. [1914]), quoted by G. S. Miller, 'Some Elements of Sexual Behavior in Primates and Their Possible Influence on the Beginnings of Human Social Development', in *Journal of Mammalogy*, ix. (1928), p. 279.

<sup>4</sup> W. Borgius, 'Ehereform?' in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xv. (Berlin & Köln, 1928), p. 392.

rise to a sense of latent or open hatred between a married pair. This hatred is observed most frequently in love matches".<sup>1</sup> It is a matter of ordinary experience that sexual indifference and a desire for new gratifications of the sexual impulse are frequent causes of divorce; and according to Von Oettingen, the statistics of divorce and remarriage in Europe show that the taste for variety, in many cases, is the chief cause of it.<sup>2</sup> Here again certain answers given to Dr. Hamilton's questions may be of some interest. Thirty-three of the women stated categorically that they did not crave variety of sex experience in the sense of having sex desire directed toward men other than their husbands; while only 6 of the men said they did not crave variety of sex experience, and 20 said they were not naturally polygamous. Forty-one of the men and 29 of the women said they craved such variety.<sup>3</sup> To the question, "If your spouse has ceased to be sexually attractive to you, how do you account for this fact?" 12 of the men gave the answer that the cause of it was desire for variety, the lack of novelty, being with her continually, or something similar; while 2 of the women said the cause was continued intimacy or too much proximity.<sup>4</sup> These figures seem to lend support to the opinion that the feminine love of variety is less acute than the masculine.

Attempts are made to gratify the desire for variety and relieve the monotony within the matrimonial boundary. "Each night should have its menu", says Balzac; "there is a devouring monster that marriage should instantly combat, its name is habit. If a man cannot make a difference between the pleasures of two

<sup>1</sup> Bloch, *op. cit.* p. 209.

<sup>2</sup> A. von Oettingen, *Die Moralstatistik in ihrer Bedeutung für eine Socialethik* (Erlangen, 1882), p. 150.

<sup>3</sup> Hamilton, *op. cit.* pp. 368, 390.

<sup>4</sup> *Ibid.* p. 166 sq.

successive nights, he has married too soon".<sup>1</sup> Medical writers describe and advocate a great variety of sex plays and many variations of method of performing the act itself, and are convinced that such plays and variations are not only permissible to spouses, but are of definite value for overcoming marital sex maladjustments. Dr. Hamilton's tables give us an idea both of their multifariousness and their frequency.<sup>2</sup> Separate beds for the married couple, which on the Continent has long been looked upon as a matter of course, and, better still, separate bedrooms, may also serve the same ultimate purpose. "When a husband and wife sleep in separate rooms, you may know that they are either virtually divorced, or that they have learnt the secret of happiness; they either abominate or they adore one another".<sup>3</sup> Ellen Key believes that in another generation separate dwellings will perhaps have ceased to attract attention.<sup>4</sup> But nothing can more effectively counteract the craving for variety than the feeling of conjugal love. While the sensual desire is abated by frequent gratification, the spiritual side of love has a tendency to increase in the course of time. The sexual element is pushed into the background, and can no longer disturb the harmonious relation between husband and wife. Unfortunately, however, many marriages do not turn out to be so successful. The craving for change often finds its outlet in adultery.

<sup>1</sup> Balzac, *op. cit.*, Méditation v.

<sup>2</sup> Hamilton, *op. cit.* pp. 158, 178 sq.

<sup>3</sup> Balzac, *op. cit.*, Méditation xvii.

<sup>4</sup> Key, *op. cit.* p. 390.



## CHAPTER IV

### ADULTERY AND JEALOUSY

DESIRE for variety is, of course, not the only cause of adultery. A married man or woman may for some other reason prefer sexual intercourse with an outsider to connubial intercourse, or may be guilty of unfaithfulness on account of long absence from the spouse or in a case of intoxication. In the latter cases especially, but also in some others, the relations between husband and wife may persist without any serious disturbance.

“A couple”, says Dr. Tenenbaum, “may love each other and enjoy mutual happiness despite the occasional *faux pas* due to temperamental lapses or chance seduction”.<sup>1</sup> This statement is confirmed by some of Dr. Hamilton’s tables. Twenty-eight men and 24 women out of one hundred married men and an equal number of married women examined by him acknowledged that they had committed adultery. The distribution of these cases according to their rating as to the present degree of satisfaction with the marriage as a whole showed that 28·57 per cent. of the adulterous men and 16·67 per cent. of the adulterous women belonged to the satisfied group, while 59·72 per cent. of the men and 53·96 per cent. of the women who had not committed adultery belonged to that group.<sup>2</sup> Judge Lindsey, also, remarks that physical infidelity, according to

<sup>1</sup> J. Tenenbaum, *The Riddle of Sex* (London, 1930), p. 195.

<sup>2</sup> G. V. Hamilton, *A Research in Marriage* (New York, 1929), pp. 395, 541.

his experience and observation, does not necessarily injure or destroy the spiritual relationship of marriage: "what would destroy one marriage has no effect on another marriage. These matters are for individual decision, based on culture, fineness of feeling, good sense, sensitiveness and good taste".<sup>1</sup> According to Van de Velde, it is only very rarely that adultery is the sole ground for married hostility. "In a harmonious marriage, harmonious also from the sexual point of view, the woman is only rarely inclined to be unfaithful, and, further, fights such an inclination with all her power and almost always successfully. The man may, perhaps, run more risk of being dominated by sexual feelings for another woman, or wish to satisfy his will to power by overcoming her resistance. He will also more easily yield to such latent tendencies, but this will not cause hostility in a marriage which is otherwise harmonious. Certainly not in the man, because both the sexual and the other ties that bind him to his wife are by far the most powerful. Nor in the woman, because, in an otherwise happy marriage, her love is so great and her attachment so strong, that she forgives. This, if it is done with taste and graciousness, strengthens the marriage bond to a marked degree". He adds that it is quite a different matter when disharmony has already existed between the married pair, particularly if they disagree regarding the fulfilment of their sexual desires.<sup>2</sup> Adultery, says Mr. Haynes, "may mean anything or nothing: it may mean nothing more than the caprices of sexual appetite (which are by no means incompatible with a perfectly sincere devotion to a spouse who has become a lifelong friend and partner) or it may be the culminating expression of a fixed

<sup>1</sup> B. B. Lindsey and Wainwright Evans, *The Companionate Marriage* (London, 1928), p. 278.

<sup>2</sup> Th. H. van de Velde, *Sex Hostility in Marriage* (London, 1931), p. 102 sq.



detestation by one spouse of the other, accompanied by every kind of cruelty and treachery. The desire for divorce is far oftener due to the incompatibility of the parties than to sexual vagaries ".<sup>1</sup>

Speaking of adultery committed by the husband, Hedwig Wega points out that if it is a purely sensual act, it does not always disturb the relations between him and his wife, and that if the latter " feels sure of enjoying her husband's friendship and respect, if their domestic life is harmonious even *after* the event, she may consider whether she does right in dissolving her marriage only because his nature, which is more sensual than hers, led him astray ".<sup>2</sup> Another female writer, Gabriele Reuter, says that it is for a woman's own good and for that of her children more important that her husband should show her love, respect, and friendship than that he should preserve unconditional physical faithfulness.<sup>3</sup> Pepys shows in his *Diary* that in spite of his irresistible passion for sexual variety and his constantly recurring wayward attraction to a long series of women, he retains throughout a deep and unchanging affection for his charming young wife; and neither he nor his wife had the very slightest wish to leave each other. The bond of marriage remained firm, even though it had been degraded by insincerity on one side and the jealous endeavour on the other to secure fidelity by compulsion.<sup>4</sup> Milton wrote: " The adultery is not the greatest breach of matrimony. . . . He who affirms adultery to be the highest breach, affirms the bed to be

<sup>1</sup> E. S. P. Haynes, *Divorce as It Might Be* (Cambridge, 1915), p. 4.

<sup>2</sup> Hedwig Wega, ' Über Ehe, freie Liebe und Freundschaft zwischen Mann und Weib ', in *Zeitschrift für Sexualwissenschaft*, vi. (Bonn, 1919-1920), p. 67 sq.

<sup>3</sup> Gabriele Reuter, quoted by I. Bloch, *The Sexual Life of Our Time* (London, 1908), p. 199.

<sup>4</sup> See Havelock Ellis, *Studies in the Psychology of Sex*, vi. (Philadelphia, 1923), pp. 495, 568.



the highest of marriage, which is in truth a gross and boorish opinion, how common soever; as far from the countenance of Scripture, as from the light of all clean philosophy or civilisation".<sup>1</sup>

Adultery does not generally lead to divorce—which, of course, does not imply absence of marital dissatisfaction, since there may be various reasons for not dissolving the marriage. Michels even says that it is only in an exceedingly small fraction of cases that adultery results in divorce;<sup>2</sup> and Traumann, another authority on the subject, maintains that when it is the juridical ground for divorce it very rarely is the real ground.<sup>3</sup> Where the law recognises no other ground, as in England, adultery naturally becomes a pretext for all sorts of reasons. Taking the American statistics, we find that, in 1867, 33 per cent. of all divorces were granted for adultery, 41 for desertion, and 13 for cruelty; whilst in 1928, 9 were granted for adultery, 32 for desertion, and 47 for cruelty. Dr. Cahen explains this remarkable decrease of divorces granted for adultery by saying that "the increasing leniency of the courts in interpreting mental cruelty no longer makes it necessary for any considerable proportion of couples to bear the shameful publicity of a divorce trial on infidelity".<sup>4</sup> According to answers given by a group of students belonging to various institutions in Kharkov in 1926, 22.6 per cent. of the divorces which had occurred among them had been effected by men for marital differences of an "ideal" character and only 12.5 per cent. for adultery, while 9 per cent. had been brought about by

<sup>1</sup> J. Milton, 'The Doctrine and Discipline of Divorce', in *The Prose Works of*, i. (London, 1806), p. 367 sq.

<sup>2</sup> R. Michels, *Sittlichkeit in Ziffern?* (München & Leipzig, 1928), p. 117.

<sup>3</sup> Traumann, 'Arzt und Reform des Eherechts', in *Zeitschrift für Sexualwissenschaft*, xiv. (Berlin & Köln, 1927), p. 190.

<sup>4</sup> A. Cahen, *Statistical Analysis of American Divorce* (New York, 1932), p. 35 sqq.

women on account of adultery.<sup>1</sup>

In humanity at large adultery is the most generally recognised ground of divorce. Among many uncivilised peoples unfaithfulness on the part of the wife seems to be the only, or almost the only, ground recognised by tribal custom; but we also hear of a few who do not consider a man justified in repudiating his wife on account of adultery, even though he may do so for some other cause. In exceptional cases we are told that the wife has a right to divorce an unfaithful husband.<sup>2</sup> According to Chinese law the husband is liable to punishment if he retains an adulterous wife;<sup>3</sup> whereas "the idea of a wife divorcing her husband for adultery, or for any reason whatever, is one which excites a smile, as absurd and preposterous, whenever mentioned to the Chinese".<sup>4</sup> The divorce law of the Japanese Taihō Code was substantially the same as that in China; the infidelity of a married woman was a recognised ground of divorce, particularly because her crime caused a confusion of blood whereby a person not in reality related to the ancestors might succeed to the worship.<sup>5</sup> The right of the husband to divorce his wife at his pleasure is the central thought in the entire system of Jewish divorce law; and the Rabbis neither did nor could set it aside, although they gradually tempered its severity by numerous restrictive measures. On the other hand, the Jewish law has

<sup>1</sup> Z. A. Gurewitsch and F. J. Grosser, 'Das Geschlechtsleben der Gegenwart', in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xv. (Berlin & Köln, 1928), p. 537 sq.

<sup>2</sup> E. Westermarck, *The History of Human Marriage*, iii. (London, 1921), p. 288 sqq.

<sup>3</sup> *Ta Tsing Leu Lee*, translated by G. T. Staunton (London, 1810), sec. cxvi. p. 120.

<sup>4</sup> J. Doolittle, *Social Life of the Chinese*, i. (New York, 1867), p. 106.

<sup>5</sup> N. Hozumi, *Ancestor-Worship and Japanese Law* (Tokyo, etc., 1913), p. 145.



never given the wife a right to divorce her husband; but the Mishnah allowed her to sue for divorce, and if the court decided that she was entitled to be divorced the husband was forced to give her a bill of divorce, although he was supposed to give it of his own free will and accord. The causes for which she could demand such a bill became gradually more numerous; but although she could do so if the husband was guilty of notorious dissoluteness of morals, simple adultery on his part is not, at Jewish law, a sufficient ground for divorce. According to Mohammedan law the husband may repudiate his wife whenever he pleases, whereas the wife can never divorce her husband; she may take steps leading to the dissolution of her marriage, but she could never prefer a complaint before the judge because of her husband's unfaithfulness.<sup>1</sup> Such a thing is naturally out of the question where polygyny is a legal institution.

In ancient Greece, according to Attic law, the husband could repudiate his wife whenever he liked, and if she had been convicted of adultery it was necessary for him to divorce her, condonation of the offence being visited by *atimia*, or infamy; but the licence of husbands was taken as a matter of course. In the Roman law a wife *in manu*, i.e. one who was in her husband's power, could neither require nor prevent a divorce, and the husband's legal authority in regard to the dissolution of a marriage with *manus* was as absolute as it was in regard to the other incidents of such a marriage. Gradually, however, marriage with *manus* fell into disuse, and was, under the Empire, generally superseded by marriage without *manus*, which conferred on the husband hardly any authority at all over his wife, and the dissolution of which could be brought about by the will of either party.<sup>2</sup> According to the

<sup>1</sup> *The History of Human Marriage*, iii. 307 sqq.

<sup>2</sup> *Ibid.* iii. 318 sqq.



old customary law of the Teutonic peoples, the husband was entitled to repudiate his wife if she was guilty of conjugal infidelity, but the wife had originally no right to dissolve the marriage. In the Frankish period she could, according to some law-books, effect a divorce or leave her husband if he was convicted of adultery—an innovation which has been traced to the influence of Christian ideas.<sup>1</sup>

Christianity revolutionised European legislation with regard to divorce. According to the New Testament, a man who puts away his wife and marries another commits adultery against her, and a woman who puts away or deserts her husband and is married to another is guilty of a similar crime. But there are two exceptions to this rule. Christ taught, according to St. Matthew, that a man might put away his wife for fornication, but for no other reason; and St. Paul lays down the rule, that if a Christian is married to an unbeliever and the latter departs, the Christian “is not under bondage”. Gradually, however, the Western Church made up her mind to deny the dissolubility of a consummated Christian marriage;<sup>2</sup> and this decision influenced profoundly the secular legislation in Roman Catholic countries. But it was rejected by the Reformers. They all agreed that divorce, with liberty for the innocent party to remarry, should be granted for adultery; and prevailing opinion among the Fathers of English Protestantism appears also to have accorded a similar privilege to the wife on like provocation, although there were undoubtedly some in the Protestant ranks who were not so liberal in her behalf. But in the Foljambe case, in 1602, the old canon law was revived; and only in the civil divorce law of 1857 the legal principle that a valid English marriage could not be dissolved by judicial authority was at last abandoned.

<sup>1</sup> *The History of Human Marriage*, iii. 325 sq.

<sup>2</sup> *Ibid.* iii. 327 sq.

Divorce could be granted to a husband whose wife had been guilty of adultery, but to the wife only if her husband had been guilty of incestuous adultery, bigamy with adultery, rape, sodomy, bestiality, or adultery coupled with cruelty or with desertion without reasonable excuse for two years and upwards.<sup>1</sup> In 1923 the equality of the sexes in obtaining divorce was conceded: the husband's adultery alone was made sufficient ground for granting a divorce to the wife.

On the Continent a fresh impetus to a more liberal legislation on divorce was given in the eighteenth century by the new philosophy with its conceptions of human freedom and natural rights. In France they led to the law of 1792, which granted divorce on a great variety of grounds. But twelve years later this law was superseded by the new provisions in Napoleon's Civil Code, which made divorce more difficult; thus though a husband always could obtain a divorce from his unfaithful wife, a wife could obtain it from her unfaithful husband only when he had kept his mistress in the common house. At the Restoration in 1816 divorce was abolished in France; but it was re-enacted by a law of 1884, the provisions of which were simplified by later laws. The divorce law of the Napoleonic Code was again introduced, but with some changes, one of which was that a wife could in all circumstances obtain a divorce for the adultery of her husband.<sup>2</sup> In other modern laws, also, the spouses are as a rule on a footing of perfect equality, but there are some exceptions to the rule. Whilst any act of adultery in the wife is everywhere a sufficient cause for dissolving the marriage, there are countries in which adultery on the part of the husband only in certain circumstances gives the wife a right to demand a divorce.<sup>3</sup>

<sup>1</sup> *The History of Human Marriage*, iii. 334 sqq.    <sup>2</sup> *Ibid.* iii. 338 sqq.

<sup>3</sup> *Ibid.* iii. 343, 344, 358, 359 n. 11; J. K. Folsom, *The Family* (New York, 1934), p. 362 (Texas, Kentucky, North Carolina).



From this survey of facts it appears that with regard to divorce a difference between the infidelity of a husband and that of a wife has very commonly been made by custom or law; and the same is the case with regard to judicial separation in Roman Catholic countries where divorce is prohibited.<sup>1</sup> We notice a similar difference in the penalties attached to adultery. A man who commits adultery with another man's wife may certainly have to suffer. Among savages he has very commonly to pay with his life; and even among many peoples who generally prohibit self-redress he may be put to death by the aggrieved husband, especially if he be caught *flagrante delicto*.<sup>2</sup> In other cases he may be subject to capital punishment in the proper sense of the word; this was his fate according to Hebrew law, and Christian legislators followed the example.<sup>3</sup> Among a considerable number of savage peoples, especially in Africa, it is the seducer only who suffers, while the unfaithful wife escapes without punishment; but more commonly she, also, is treated as an offender, being discarded, beaten, or ill-treated in some way or other, and not infrequently killed. Often, too, she is disfigured by her enraged husband in such a way as to be deprived of her attractions: he bites or cuts off her nose, or cuts off one or both of her ears or her hair, or shaves her head. A similar punishment has figured even in European law-books; according to a law of Cnut, an adulteress shall have her nose and ears cut off.<sup>4</sup>

It is obviously the rule among savage and barbarous tribes that while conjugal fidelity is considered a stringent duty in the wife, it is not considered so in the husband, although there are interesting exceptions to the rule; and among the peoples of ancient civilisation

<sup>1</sup> *The History of Human Marriage*, iii. 357 sq.

<sup>2</sup> E. Westermarck, *The Origin and Development of the Moral Ideas*, i. (London, 1912), p. 290 sqq.      <sup>3</sup> *Ibid.* ii. (1917), p. 447 sq.

<sup>4</sup> *The History of Human Marriage*, i. 313 sq.



the law requires faithfulness of the wife alone. In China, where adultery in a woman was branded as one of the vilest crimes and the guilty wife was oftentimes "cut into small pieces" (according to the present law, the punishment is only imprisonment for a period not exceeding two years),<sup>1</sup> a man can with impunity commit adultery with an unmarried woman. In Japan, "while the man is allowed a loose foot, the woman is expected not only to be absolutely spotless, but also never to show any jealousy, however wide the husband may roam". According to Hebrew law adultery was a capital offence, but it presupposed that the guilty woman was another man's wife. The Indo-European nations in early times saw nothing objectionable in the unfaithfulness of a married man, whereas an adulterous wife was subject to the severest penalties. Until some time after the introduction of Christianity among the Teutons their law-books made no mention of the infidelity of husbands, because it was permitted by custom. The Romans defined adultery as sexual intercourse with another man's wife; on the other hand, the intercourse of a married man with an unmarried woman was not regarded as adultery.<sup>2</sup> At the same time the idea that fidelity in marriage ought to be reciprocal was not altogether unknown in classical antiquity. In a lost chapter of his *Economics*, which has come to us only through a Latin translation, Aristotle points out that, for various reasons, it is prudent for a man to be faithful to his wife, but that nothing is so peculiarly the property of a wife as a chaste and hallowed intercourse.<sup>3</sup> Plutarch condemns the man who, lustful and dissolute, goes astray with a

<sup>1</sup> B. Steinwallner, 'Das neue chinesische Sexualstrafrecht', in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xviii. (Berlin & Köln, 1931), p. 202.

<sup>2</sup> *The Origin and Development of the Moral Ideas*, ii. 451 sqq.

<sup>3</sup> Aristotle, *Oeconomica*, p. 341. Cf. Isocrates, *Nicocles sive Cyprii*, 40.

courtesan or maid-servant; though at the same time he admonishes the wife not to be vexed or impatient, considering that "it is out of respect to her that he bestows upon another all his wanton depravity".<sup>1</sup> Plautus argues that it is unjust of a husband to exact a fidelity which he does not keep himself.<sup>2</sup>

In its condemnation of adultery Christianity made no distinction between husband and wife. If continence is a stringent duty for unmarried persons independently of their sex, the observance of the sacred marriage vow must be so in a still higher degree. Yet even in some Christian countries the law makes a distinction between the adultery of a husband and that of a wife, apart from the rules relating to divorce or separation. The French code considers it "excusable" if a husband kills his adulterous wife in the act;<sup>3</sup> and it makes such a wife liable to imprisonment, while the adultery of a husband is punishable only if he keeps a concubine in the conjugal domicile, and then the punishment is merely a fine.<sup>4</sup> According to the Spanish penal code of 1928, the adultery of a wife is likewise punishable in all circumstances, but that of a husband only if he keeps his accomplice in the house or, otherwise, if his behaviour gives rise to scandal.<sup>5</sup> So also, according to the Italian code of 1930, the adultery of a wife, called *adulterio*, is punishable in any case, but that of a husband, called *concubinato*, only if he keeps his mistress in his home or if he keeps her elsewhere "notoriously".<sup>6</sup> In modern legislation adultery, if punishable at all, is generally an indictable offence;<sup>7</sup> but, as a matter of fact, it is very

<sup>1</sup> Plutarch, *Conjugalia praecepta*, 16.      <sup>2</sup> Plautus, *Mercator*, iv. 5.

<sup>3</sup> *Code pénal*, art. 324.

<sup>4</sup> *Ibid.* arts. 337, 339.

<sup>5</sup> *Código penal*, art. 620 sqq.

<sup>6</sup> *Codice penale*, art. 559 sq.

<sup>7</sup> E. H. Kisch, *Die sexuelle Untreue der Frau*, i. (Bonn, 1918), p. 19; D. M. Kauschansky, 'Die persönliche und wirtschaftliche Lage der Frau in der Ehe nach europäischem Recht', in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xviii. (Berlin & Köln, 1931), p. 378.



rarely punished.<sup>1</sup> In England an Act passed in the middle of the seventeenth century made the adultery of a wife (nothing is said of a husband) felony, both for her and her partner in guilt, and therefore punishable by death;<sup>2</sup> but this Act fell with the fall of the Commonwealth.<sup>3</sup> Parliament has never acted to deprive the Church of her jurisdiction over adultery, but no attempt to make it punishable by the criminal law has succeeded.<sup>4</sup> In the United States, where the Puritan tradition as to sexual offences is dying more slowly than it died in England, there are only two states that have no provision whatsoever for the punishment of adultery, whilst in eighteen other states a single act of adultery is not itself a criminal offence.<sup>5</sup> The Russian Soviet law takes no notice of adultery.<sup>6</sup>

That a married man enjoys more liberty than a married woman is largely due to the same causes as make him the more privileged partner in other respects. The infidelity of his wife is often, in a sense, an offence against property, while this is not the case with his own infidelity; and whether, or how far, the latter is stigmatised as an offence against the wife, chiefly depends upon the degree of regard which is paid to the feelings of women. But there are also more special reasons for that inequality between the sexes. It was a doctrine of the Roman jurists that adultery is a crime in the wife, and in the wife only, on account of the danger of

<sup>1</sup> W. Mittermaier, *Der Ehebruch* (Bonn, 1919), p. 18; W. Borgius, 'Ehereform?' in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xv. (Berlin & Köln, 1928), p. 393.

<sup>2</sup> H. Scobell, *A Collection of Acts and Ordinances of General Use, made in the Parliament*, pt. ii. (London, 1657), p. 121.

<sup>3</sup> W. Shephard, *A Sure Guide for His Majesties Justices of Peace* (London, 1663), p. 460.

<sup>4</sup> G. May, *Social Control of Sex Expression* (London, 1930), pp. 174, 176.

<sup>5</sup> *Ibid.* p. 203.

<sup>6</sup> M. Hindus, *Humanity Uprooted* (London, etc., 1929), p. 88.



introducing strange children to the husband;<sup>1</sup> a result of this would be that his property descended to a person who was not his own child. Moreover, the temptation to infidelity and the facility in indulging in it are commonly greater in the case of the husband than in that of the wife, and actual practice is apt to influence moral opinion. Another reason for the inequality in question is undoubtedly the general notion that unchastity of any kind is more discreditable for a woman than for a man. And finally, it is a frequent observation that the adultery of the wife has a more disorganising effect on the domestic life than the adultery of the husband.

These points of difference have been emphasised by various writers, who do not suggest, however, that adultery should be a legal ground for divorce solely when committed by the husband. Michels remarks that "the adulterous wife unquestionably commits a more inconsiderate and more blameworthy act than the adulterous husband, for the former deceives doubly by fathering upon her husband the children of another man".<sup>2</sup> This would more likely be the case if the popular belief that an unfaithful wife is more apt to conceive with her lover than with her husband could be proved to be true. It is supported by Kisch, who, like Matthews Duncan before him,<sup>3</sup> thinks it probable that sexual excitement on the woman's part is an important link in the chain of conditions producing impregnation.<sup>4</sup> It has been argued that the danger of confusion of pregnancy has disappeared with the

<sup>1</sup> W. A. Hunter, *A Systematical and Historical Exposition of Roman Law* (London, 1885), p. 1071.

<sup>2</sup> R. Michels, *Sexual Ethics* (London & Felling-on-Tyne, 1914), p. 136.

<sup>3</sup> J. M. Duncan, *Gulstonian Lectures on Sterility in Woman* (London, 1884), p. 96.

<sup>4</sup> E. H. Kisch, *Die Sterilität des Weibes* (Wien & Leipzig, 1886), p. 99; *idem*, *The Sexual Life of Woman* (London, s.d.), p. 524 sqq.

development of methods for preventing conception,<sup>1</sup> but it is anything but certain that the lovers trouble themselves about contraceptives. Von Krafft-Ebing writes: "The unfaithfulness of a wife in comparison with that of a husband, is morally much more weighty, and should be more severely punished legally. The unfaithful wife dishonours not only herself, but also her husband and her family, not to speak of the possibility of *pater incertus*".<sup>2</sup> "The man", says Kisch, "can make a lapse in his marriage without the consequences of it being necessarily of vital importance; he can at any moment do remorseful penance without the mischief he has caused being irreparable. The infidelity of the wife poisons the soul for ever, shakes the foundation of the harmony between mother and children, makes the legitimacy of the latter uncertain, and leads to an irremediable rupture of the domestic life".<sup>3</sup> Hedwig Wega observes that while the adultery of the husband is in many cases a purely sensual act, which need not spoil the marriage, that of the wife is in no case a merely bodily attachment.<sup>4</sup> Stendhal remarks that where love is absent, the fidelity of a married woman is something contrary to nature, but that "with love there, one has no taste for any mate but that of the beloved fount".<sup>5</sup> He also writes: "The difference between infidelity in the two sexes is so real, that a woman of passion may pardon it, while for a man that is impossible".<sup>6</sup>

The disharmony caused by infidelity might not

<sup>1</sup> Ruth Reed, *The Modern Family* (New York, 1929), p. 154. See also B. Russell, *Marriage and Morals* (London, 1929), p. 183.

<sup>2</sup> R. von Krafft-Ebing, *Psychopathia Sexualis* (Stuttgart, 1903), p. 14 (English translation [Philadelphia & London, 1892], p. 14 sq.).

<sup>3</sup> Kisch, *Die sexuelle Untreue der Frau*, i. 4 sq.

<sup>4</sup> Hedwig Wega, *loc. cit.* p. 67.

<sup>5</sup> De Stendhal (Henry Beyle), *On Love* (London, 1915), ch. lvi. p. 241.

<sup>6</sup> *Ibid.* ch. xxxvii. p. 133.



infrequently be tempered by a more careful consideration of the case. Though feelings are stronger than reason, they may be more or less influenced by it. It may then appear absurd to break a previously happy marriage because of a single lapse, due to momentary over-excitement or intoxication, on the part of the husband; and when the wife sins, she may be led astray by a skilful seducer, who overcomes her power of resistance. Lessing makes Emilia Galotti, who does not love the wooing prince but trembles at the thought of being entrapped by his art, exclaim: "Force, force, who cannot bid defiance to force? What is called force is nothing. Seduction is the real force".<sup>1</sup> Some reflection may even reveal that the apparently innocent party is the true cause of what has happened. In many English divorce suits the adultery of the wife has been found to be the fault of the husband.<sup>2</sup> "Every woman", says Balzac, "is to her husband just what he has made her".<sup>3</sup> According to Stekel, a sexually unsatisfied wife has only to choose between sin and neurosis.<sup>4</sup> But the wife, on her part, may also, through her frigidity or otherwise, be responsible for the infidelity of her husband, and practically drive him to other women.<sup>5</sup> Conjugal unfaithfulness is of course formally a breach of faith, but it is an unreasonable claim that the eternal troth which the two lovers once swore to each other should be an irrevocable pledge in all circumstances; even though the Law, "creeping up behind, as it were, at this critical moment, and overhearing the two thus pledge themselves, claps its

<sup>1</sup> Lessing, *Emilia Galotti*, v. 7.

<sup>2</sup> Kisch, *Die sexuelle Untreue der Frau*, i. 116.

<sup>3</sup> H. de Balzac, *Physiologie du mariage*, Méditation xvii.

<sup>4</sup> W. Stekel, quoted by O. Adler, *Die mangelhafte Geschlechts-empfindung des Weibes* (Berlin, 1911), p. 204.

<sup>5</sup> For "excusable" cases of adultery, see W. Mittermaier, 'Ehebruch', in M. Marcuse, *Handwörterbuch der Sexualwissenschaft* (Bonn, 1923), p. 73 sq.



book together with a triumphant bang, and exclaims: 'There now, you're married and done for, for the rest of your natural lives' ".<sup>1</sup> Ellen Key remarks that to talk of "the duty of lifelong fidelity" is much the same as to talk of "the duty of lifelong health"; a man can promise to take good care of his life or of his love, but he cannot unconditionally undertake to preserve them.<sup>2</sup>

Dr. W. J. Robinson writes that we must teach and show our women and men "that not every woman can necessarily fill out a man's entire life, that not every woman can necessarily occupy every nook and corner of a man's mind and heart, and that there is nothing humiliating to the woman in such an idea (and *vice versa*). . . . We must teach our men that when they marry a woman she does not become their chattel, their piece of property, which nobody may touch, nobody may look at or smile at. . . . We must teach our men *and* women that there is essentially nothing shameful or humiliating in being displaced by a rival. . . . It does not at all mean that the change has been made because the rival is superior. . . . Inculcating those ideas would do away with the feeling of wounded vanity which is such an important component in the feeling of jealousy. Further we must teach our children from the earliest age that jealousy is 'not nice', that it is a mean feeling, that it is a sign of weakness, that it is degrading to the person who entertains it, particularly to the person who exhibits it. . . . People properly brought up will always succeed in controlling or suppressing certain non-vital instincts or emotions on which society puts its stamp of disapproval, which it considers 'not nice' or disgraceful. I am, therefore, an optimist in relation to the eventual uprooting of

<sup>1</sup> E. Carpenter, *Love's Coming of Age* (London, 1923), p. 123 *sq.*

<sup>2</sup> Ellen Key, *Love and Marriage* (New York & London, 1911), p. 309 *sq.*

the greater number of components of the anti-social feeling of jealousy. And when woman reaches economic independence, then another component of the instinct of jealousy—the terror of losing a provider and being left in poverty—will disappear”. Dr. Robinson, however, does not imagine that characterising jealousy the way it deserves to be characterised, calling it shameful, savage, primitive feeling, etc., is at once going to banish it from the breasts of men and women in which it has found an abiding place.<sup>1</sup> Bertrand Russell is of opinion that men should be freed from the duty of sexual conjugal fidelity, but, in exchange, have the duty of controlling jealousy; “it is better”, he says, “to control a restrictive and hostile emotion such as jealousy, rather than a generous and expansive emotion such as love”. He also thinks that it “can be controlled if it is recognised as bad, and not supposed to be the expression of a just moral indignation”, nay, even thinks it may be hoped that with the right education from the start such self-control will become comparatively easy. It seems to him by no means impossible that the jealousy of husbands should in the future arise only when wives propose to choose some other man as the father of their children.<sup>2</sup>

Edward Carpenter distinguishes two kinds of jealousy, a natural and an artificial. The first arises from the uniqueness of the relationship between two persons and the endeavour to stamp this uniqueness on the whole relationship, sexual and moral, and especially on the sexual relationship. This kind of jealousy seems in a sense natural and normal, at any rate for a period. It is felt with terrible keenness and intensity by lovers before the consummation of their passion,

<sup>1</sup> W. J. Robinson, *Woman Her Sex and Love Life* (New York, 1923), pp. 386-388, 391.

<sup>2</sup> Russell, *op. cit.* pp. 188, 114, 115, 249, 239.



and perhaps for a year or two afterwards, though it may be protracted rather indefinitely in the case where the alliance, on one side at any rate, is not quite satisfactory. The other kind of jealousy rests on the sense of property and is the kind that is often felt by the average husband and wife long after honeymooning days—by the husband not because of his especial devotion to his partner, but because he is furious at the idea of her disposing as she likes with what he considers his property, and by the wife because she is terrified at the thought that her matrimonial clothes-peg, from which depend all her worldly prospects, may vanish away or become the peg for another woman's clothes. This kind of jealousy, which is probably not quite so heart-rending as the other but is often passionate enough and lasts on indefinitely, is more especially the product of immediate social conditions. "In the communism and humanism of the future, as the sense of property declines, and as Love rises more and more out of mere blind confusion with the sex-act, we may fairly hope that the artificial jealousy will disappear altogether, and that the other form of the passion will subside again into a comparatively reasonable human emotion".<sup>1</sup>

Others argue that jealousy is a useless or stupid feeling. Havelock Ellis remarks that "the jealous person seldom makes himself more lovable by his jealousy and frequently much less lovable".<sup>2</sup> Forel writes: "We often hear of justified jealousy; I maintain, on the contrary, that jealousy is never justified, and that it is only the brutal stupidity of an atavistic heritage, or a pathological symptom. A reasonable man who has doubts as to the fidelity of his wife has certainly the right to assure himself of their correctness. But of what use is it to be jealous? If he finds his suspicions false he has, by his manner, unnecessarily

<sup>1</sup> Carpenter, *op. cit.* p. 196 *sqq.*

<sup>2</sup> Ellis, *op. cit.* vi. 566.



offended his wife and made her unhappy, and destroyed conjugal confidence and happiness. If, on the contrary, his suspicions are well founded he has only to choose between one of two ways. If it is a case of amorous intoxication suggested by another man to his wife, who is often perhaps very unhappy about it, she may then be restored to her husband and pardoned. If, however, love for her husband is entirely extinguished in her, or if she is only a false intriguer without character, jealousy is even more absurd, for the game is not worth the candle, and immediate divorce is necessary".<sup>1</sup>

Jealousy has a deeply rooted foundation in animal nature. It has been said that it "seems such a necessary psychological accompaniment to biological behaviour, amidst competitive struggle, that one is tempted to consider it genetically among the oldest of the emotions, synonymous almost with the will to live".<sup>2</sup> But I have ventured to suggest that it may be instrumental to the preservation of the species in another way as well: the murderous rage of the male which tolerates no rivals may be the result of natural selection if promiscuous intercourse is—as it often is, perhaps not without reason, supposed to be—unfavourable to fecundity.<sup>3</sup> The general prevalence of male jealousy among uncivilised races is proved both by an array of statements directly testifying it and by their customs relating to adultery.<sup>4</sup> There are, no doubt, savages who are said to be little addicted to it, and in other cases the absence of jealousy has been inferred from the practice of offering one's wife to a visitor or of exchanging or prostituting wives. But, as I have shown elsewhere, there are special

<sup>1</sup> A. Forel, *Die sexuelle Frage* (München, 1931), p. 144 sq.

<sup>2</sup> A. L. Gesell, 'Jealousy', in *American Journal of Psychology*, xvii. (Worcester, 1906), p. 447.

<sup>3</sup> *The History of Human Marriage*, i. 334 sqq.

<sup>4</sup> *Ibid.* i. 302 sqq.

reasons for these customs, which by no means exclude the existence of jealousy among the peoples who practise them.<sup>1</sup> It has been supposed that primitive man was devoid of that feeling. But the prevalence of male jealousy both among the anthropoid apes and the existing races of men constitutes a strong *prima facie* evidence of its prevalence in mankind during earlier ages as well. Hartland argues that the sense of ownership has been the seed-plot of jealousy, and that in consequence this feeling operates only feebly in conditions where the sense of ownership is undeveloped or imperfect.<sup>2</sup> This is to my mind a more than doubtful proposition. It is true that a savage often regards his wife as a kind of property and a man who commits adultery with another man's wife as a thief; sometimes he is called by that name, and in certain parts of Africa he is punished as a thief, having his hands, or one of them, cut off.<sup>3</sup> But if jealousy has anything to do with ownership, the reason is that it is primarily connected with the desire of possession, which is something different.

Ownership implies that a certain person or certain persons are recognised as having a *right* to the exclusive disposal of a certain thing. It owes its origin to the desire of an individual to keep and dispose of what he has appropriated or produced, but it is by no means identical with mere possession.<sup>4</sup> The male animal jealously keeps for himself the female he has appropriated and is enraged if his possession of her is interfered with, but we cannot say that his jealousy depends on a "sense of ownership". Sexual jealousy, as Dr. Shand remarks, springs from sexual love. "But sexual love cannot be separated from self-love, with which it

<sup>1</sup> *Ibid.* i. 226-234, 331 sq.

<sup>2</sup> E. S. Hartland, *Primitive Paternity*, ii. (London, 1909), p. 102 sq.

<sup>3</sup> *The History of Human Marriage*, i. 300 sq.

<sup>4</sup> See *The Origin and Development of the Moral Ideas*, ii. 1, 51 sqq.



constantly interacts; and it is due to the desire of self-love to possess certain things exclusively for self, such as women, power, and reputation, that jealousy principally arises. Thus La Rochefoucauld observes: 'Il y a dans la jalousie plus d'amour propre que d'amour' ".<sup>1</sup>

The jealousy of a man, particularly a civilised man, differs from that of a male animal, apart from any feeling of injured rights—ownership or any other right. It is coloured by the nature of his love. It is accompanied with humiliation, because "the loss of possession to which jealousy refers, or the failure to obtain it, is of such a nature as carries with it a lowering of a man's self-valuation" ".<sup>2</sup> There may also be envy of what the other one has obtained by depriving him of it. There may be fear of another man's offspring being born into the family. But there is one characteristic common to sexual jealousy in all its forms, namely, that it is an angry feeling aroused by the loss, or fear of the loss, of the exclusive possession of an individual who is the object of one's sexual desire. It is impossible to suppose that the feeling of anger will ever disappear from the human mind; so also it is impossible to imagine that the angry feeling of jealousy will disappear, however ugly and useless it may be. How violent it sometimes is among ourselves is illustrated by the fact that in analysing 188 murders committed by sane persons in England, a prison commissioner recently found that the highest number, 46, were due to jealousy, while the same number resulted from a quarrel.<sup>3</sup>

But even when the infidelity of a husband or a wife does not give rise to the angry feeling of jealousy, it may cause deep sorrow; and I think it can be demanded of a spouse to consider whether he or she has a right to ?

<sup>1</sup> A. F. Shand, *The Foundations of Character* (London, 1920), p. 258.

<sup>2</sup> *Ibid.* p. 258 sq.

<sup>3</sup> *News Chronicle*, February 2, 1935.



inflict such suffering upon the other party. Helene Stöcker observes that the refined feeling of love implies instinctively an obligation to avoid, as far as possible, making the beloved person feel pain.<sup>1</sup> It is true, as Bertrand Russell said, that love is a generous emotion. But it is not generous to the person who has to suffer for its generosity towards another.

<sup>1</sup> Helene Stöcker, 'Erotik und Altruismus', in A. Weil, *Sexual-reform und Sexualwissenschaft* (Stuttgart, 1922), p. 99.

## CHAPTER V

### OTHER CAUSES OF MATRIMONIAL UNHAPPINESS

FROM the unhappiness which may be ultimately traced to the sexual impulse we shall pass to frictions that are liable to arise from the community of life between husband and wife. These depend largely upon an unfortunate choice of partner. It may be unsuitable for various reasons. Sexual compatibility alone is an inadequate basis for married life; other requirements are that husband and wife shall be able and willing to fulfil their respective functions in the domestic circle, as also that there shall be companionship and mental compatibility between them. As Mr. De Pomerai remarks, "mentally incompatible spouses are little more than mere sleeping partners, and, since no cultured human being can be permanently bound by physical chains alone, it will inevitably happen—if the couple possess any courage or initiative at all—that they will sooner or later cease to be even sleeping partners".<sup>1</sup>

A great peril of marriage is ennui from lack of a common interest and the resultant estrangement of the partners from one another. This generally inflicts greater suffering upon the wife than upon the husband; for while the latter can take refuge in his main pre-occupation—his work—the woman's nature, more profoundly emotional, is dependent on personal relationships. Such a relationship arises particularly between people of the same position in life and on the same

<sup>1</sup> R. De Pomerai, *Marriage Past Present and Future* (London, 1930), p. 226 *sq.*

level of culture. An extreme instance of the fate of ignorant and unintelligent wives married to highly intellectual men is afforded by the fully developed Greek civilisation. The wife lived in almost absolute seclusion, in a separate part of the house, together with her female slaves, deprived of all the educating influence of male society, and having no place at those public spectacles which were the chief means of culture; and the man recognised in her no other end than to minister to his pleasure and become the mother of his children. The higher culture was the exclusive privilege of the men and the courtesans. The latter were the only free women of Athens, and often availed themselves of their freedom to acquire a degree of knowledge which enabled them to add to their other charms an intense intellectual fascination. Gathering around them the most brilliant artists, poets, historians, and philosophers, they became centres of a literary society of matchless splendour. Aspasia, who was as famous for her genius as for her beauty, won the passionate love of Pericles; Socrates owed his deep obligations to the instructions of a courtesan named Diotima; the courtesan Leontium was among the most ardent disciples of Epicurus.<sup>1</sup> And it was not the courtesans alone who drew away the men from the company of their wives. The ignorance and dullness of the latter also led to pederasty, as it nowadays does in China and among Mohammedan peoples.<sup>2</sup>

On the other hand, I have never seen happier marriages among my friends than those in which the wife takes a keen interest in the intellectual occupations of her husband, even assisting him in his work. It is in these marriages that I have found the best

<sup>1</sup> W. E. H. Lecky, *History of European Morals*, ii. (London, 1890), p. 293.

<sup>2</sup> E. Westermarck, *The Origin and Development of the Moral Ideas*, ii. (London, 1917), p. 470 sq.



confirmation of Balzac's saying: "A happy marriage is the result of perfect understanding between two souls".<sup>1</sup> But even in lower spheres of life the link between husband and wife is reinforced especially when it is possible for her to stand shoulder to shoulder with him in his life-work and to be an adroit and efficient help-mate. Moll thinks that this is the reason why we find such comparatively happy marriages among small tradespeople, where the woman often helps by serving in the shop, or among artisans, where she also "lends a hand with the job".<sup>2</sup> According to Kisch, a marriage may be harmonious even where there is considerable divergence in the intelligence and education of the couple, and in support of this he mentions professors and head physicians among his acquaintances who have married their cook, their servant-girl, a waitress, or a barmaid, and nevertheless are quite happy in their wedded life.<sup>3</sup> American divorce statistics, however, tend to show that marriages between college students are much more successful than marriages generally;<sup>4</sup> and Woodhouse, studying 250 successful families, found that nearly three-fifths of the couples had shared a common background of school or work.<sup>5</sup> According to Van de Velde, there can hardly be any doubt that, generally speaking, mental equality is a presumption of ideal marriage, although the mental harmony need not be derived from similar education: "the single presumption which absolutely must be fulfilled is a mental and temperamental *capacity* for such a rise above the narrow scope of former interests

<sup>1</sup> H. de Balzac, *Physiologie du mariage*, Méditation v.

<sup>2</sup> A. Moll, *Handbuch der Sexualwissenschaften* (Leipzig, 1912), p. 443.

<sup>3</sup> E. H. Kisch, *Die sexuelle Untreue der Frau*, i. (Bonn, 1918), p. 190 sq.

<sup>4</sup> See *supra*, p. 41.

<sup>5</sup> C. G. Woodhouse, 'A Study of 250 Successful Families', in *Social Forces*, viii. (1930), p. 522, quoted by M. F. Nimkoff, *The Family* (Cambridge, Mass., 1934), p. 377.

to the development of talents hitherto latent". He adds that the prospect of a good marriage is much more favourable when the husband is mentally superior to the wife than when the reverse is the case, because in marriage the woman will be happiest who feels herself protected by a stronger man.<sup>1</sup>

It is no doubt a risky experiment to marry into a social class which is considerably lower than one's own. Even though differences in rank and wealth of the consorts may not directly affect the relations between the parties concerned, outside influences are often brought to bear that tend sooner or later to disturb the harmony of marital life. As Loewenfeld observes, "the man who during the flood-tide of his love saw in the possession of his dear one a sufficient compensation for all hostility engendered in his family and all the other disadvantages accruing to him on account of his choice, may, when marital life has lost the first charming novelty, reach a point when he begins to regard his choice with very different eyes than he did during his engagement and during his honeymoon".<sup>2</sup> C. Gasquoine Hartley thinks that one of the most prolific causes of so many unhappy marriages at the present time in England has been the comparatively recent tendency of women to marry out of their class.<sup>3</sup> Sameness of class is of importance not only on cultural grounds: disparity of habits, manners, and tastes is as likely to wreck a marriage as intellectual maladjustment. Among many peoples marriage outside the same class or caste is strictly prohibited by custom or law.<sup>4</sup>

<sup>1</sup> Th. H. van de Velde, *Fit or Unfit for Marriage* (London, 1934), p. 281 *sq.*

<sup>2</sup> L. Loewenfeld, *On Conjugal Happiness* (London, 1912), p. 94 *sq.*

<sup>3</sup> C. Gasquoine Hartley, *Women, Children, Love and Marriage* (London, 1924), p. 165.

<sup>4</sup> E. Westermarck, *The History of Human Marriage*, ii. (London, 1921), p. 60 *sqq.*



To be a source of marital happiness mental compatibility must imply, besides homogeneous interests, agreement on vital questions. "Now this is where there should be community between man and wife", says Stevenson. "They should be agreed on their catchword in 'facts of religion', or 'facts of science', or 'society, my dear'; for without such an agreement all intercourse is a painful strain upon the mind. . . . The best of men and the best of women may sometimes live together all their lives, and, for want of some consent on fundamental questions, hold each other lost spirits to the end".<sup>1</sup> "Facts of religion" are nowadays among ourselves less important than they used to be. Difference of faith is no longer a legal bar to intermarriage, and mixed marriages have rapidly increased in frequency. In Germany the number of marriages contracted between Jews and Gentiles was about 8000 during the period 1901-1910 (against 38,000 pure Jewish marriages) and 20,000 during the period 1911-1924 (against 52,000 pure Jewish marriages),<sup>2</sup> although no section of Jewish opinion favours marriages between parties who are not of the same religion.<sup>3</sup> Marriages between Jews and Christians are said to be less satisfactory and more often end in divorce than others.<sup>4</sup> And Van de Velde speaks of the tragedy of marriages between Protestants and Catholics, which are very widespread in both Germany and Holland, the tragic conflict becoming exceedingly painful when the children are grown up and obliged to be estranged from one or other of the parents.<sup>5</sup>

<sup>1</sup> R. L. Stevenson, *Virginibus Puerisque and Other Papers* (London, 1925), p. 9 sq.

<sup>2</sup> M. Marcuse, *Die Ehe* (Berlin & Köln, 1927), p. 362.

<sup>3</sup> I. Abrahams, 'Marriage (Jewish)', in Hastings, *Encyclopædia of Religion and Ethics*, viii. (Edinburgh, 1915), p. 461.

<sup>4</sup> W. Hanauer, 'Die judisch-christlichen Mischehen', in *Allgemeines statistisches Archiv*, xvii. (Jena, 1928), p. 531 sq. See also Marcuse, *op. cit.* pp. 361, 365 sq. <sup>5</sup> Van de Velde, *op. cit.* p. 290 sq.



In Dr. Davis' study of educated American women 111 of the definitely unhappy group of married ones gave a variety of reasons for their unhappiness, but incompatibility of temperament or interest stood at the head of the list, being about 40 per cent. of the total.<sup>1</sup> "You can forgive people who do not follow you through a philosophical disquisition", says Stevenson; "but to find your wife laughing when you had tears in your eyes, or staring when you were in a fit of laughter, would go some way towards a dissolution of the marriage".<sup>2</sup> Yet the harmony between temperaments need not be perfect. By analysing the temperaments of one hundred married couples Kretschmer even arrived at the result that dissimilarity of temperament is attractive, and that the more extreme and one-sided two persons' temperaments are, the more strongly do they prefer marriages of contrast. Thirteen of the couples were judged by several of their acquaintances to be predominantly similar with reference to temperaments, 63 to be predominantly dissimilar, and 24 to be about equally similar and dissimilar. He adds: "Accurate observation and psychological analysis of a large number of married couples teach us plainly that combinations most useful for procreation frequently lead at the same time to individually propitious life-partnerships; that, for example, the instinctive inclination to the marriage of contrast not only advantageously mixes the qualities of the offspring, but that this natural supplementing of qualities often proves likewise of great advantage to both parties to the marriage themselves in the struggle for life".<sup>3</sup>

Kretschmer thus supports the popular saying that

<sup>1</sup> Katharine B. Davis, *Factors in the Sex Life of Twenty-two Hundred Women* (New York, 1929), p. 39.

<sup>2</sup> Stevenson, *op. cit.* p. 11.

<sup>3</sup> E. Kretschmer, 'Physical and Spiritual Harmony', in H. Keyserling, *The Book of Marriage* (New York [1926]), pp. 313, 317 *sqq.*

opposites attract each other, which is accepted by several scientists and philosophers, though it is denied by others.<sup>1</sup> The charm of disparity is of course obvious in the case of the standing differences, physical and mental, between the sexes, and there is probably some truth in Schopenhauer's assertion that the most manly man will seek the most womanly woman, and *vice versa*.<sup>2</sup> In some other cases the preference for contrast may be due to the sexually dulling effect of familiarity and the charm of novelty. Richard Burton wrote that "as a general rule Somali women prefer amourettes with strangers, following the well-known Arab proverb, 'The new-comer filleth the eye' ".<sup>3</sup> People generally feel most attracted by their own racial type, but at the same time even great racial differences have proved to act as sexual stimulants. An American writer observes that "in the South in particular, prior to the Civil War, concubinage with the negro woman was a common, if not a sanctioned practice";<sup>4</sup> and the Southerners, on their part, averred that among the Northerners lust for the African women was a far more prevalent motive than their pretended humanity or their liberating zeal.<sup>5</sup>

<sup>1</sup> See on this subject the earlier editions of my book, *The History of Human Marriage* (London, 1891, etc.), p. 353 *sqq.*; H. Ellis, *Studies in the Psychology of Sex*, 'Sexual Selection in Man' (Philadelphia, 1905), p. 195 *sqq.*; Kisch, *op. cit.* i. 43 *sqq.*; Ellen Key, *Love and Marriage* (New York & London, 1911), p. 160 *sqq.*; P. Popenoe, *Modern Marriage* (New York, 1927), p. 38 *sqq.*; W. Hagen, 'Das Problem der Gattenwahl', in *Zeitschrift für Sexualwissenschaft*, xiii. (Bonn, 1927), p. 335; R. Müller-Freienfels, 'Zur Psychologie der erotischen Selektion', *ibid.* xv. (Berlin & Köln, 1928), p. 97.

<sup>2</sup> A. Schopenhauer, *Die Welt als Wille und Vorstellung*, ii. (*Sämmtliche Werke*, iii. [Leipzig, 1916]), p. 626.

<sup>3</sup> R. F. Burton, *First Footsteps in East Africa* (London, 1856), p. 119.

<sup>4</sup> E. R. Mowrer, *The Family Its Organization and Disorganization* (Chicago, 1932), p. 259.

<sup>5</sup> A. W. Calhoun, *A Social History of the American Family from Colonial Times to the Present*, ii. (Cleveland, 1918), p. 363.



There are women who display an abnormal passion for old men.<sup>1</sup>

It is a general opinion, in some circles almost an unwritten law, that a man should marry a woman who is at least slightly younger than he is. It is therefore surprising that among the one hundred married men and the one hundred married women who were studied by Dr. Hamilton, the highest percentages of satisfied spouses were found in the groups in which the husbands were from one to three years younger than their wives or were of equal age with respect to them, whereas no man or woman found satisfaction in any marriage in which the wife was as much as seven years older than the husband; but, as he himself remarks, his figures were too small to be convincing on any score.<sup>2</sup> Van de Velde is of opinion that "for a certain period of his life it is certainly no misfortune for a young man to be married to a somewhat older woman. We see quite often that such marriages are very happy. . . . Also at the age between twenty-five and thirty, the fact that the woman is some years older will involve no essential deterioration in the marriage. On the other hand, the case generally becomes critical when the woman has passed the age of forty-five, and begins to grow noticeably old". He thinks that as a practical rule the principle may be laid down that for married couples between twenty and forty-five a difference in age of ten years is the utmost limit of the normal, and that this difference is better reduced to five or seven years for the middle years, between twenty-five and thirty-five.<sup>3</sup> Of 252 individuals examined by Mrs. Jessie Bernard the women were most satisfied with their husbands when

<sup>1</sup> Kisch, *op. cit.* i. 44. Forel, *Die sexuelle Frage* (München, 1931), p. 122.

<sup>2</sup> G. V. Hamilton, *A Research in Marriage* (New York, 1929), p. 509 *sq.*

<sup>3</sup> Van de Velde, *op. cit.* pp. 114, 107.



the latter were from zero to five years older than they, and their satisfaction tended to diminish at about an equal rate when this difference increased, regardless of whether it was they or their husbands who were the older. The men tended to be most satisfied with their wives when they were from zero to ten years older than their wives, but their dissatisfaction with their wives tended to increase more rapidly when their wives were older than they than when they were older than their wives.<sup>1</sup> According to Judge Bartlett, considerable disparity of age is one of the commonest bases of divorce, because "modern standards of living put such a premium upon the husband's earning power that few girls can hope to marry a husband near their own age without facing a grievous sacrifice".<sup>2</sup>

I have already said some words of the importance of the economic factor at the conclusion of a marriage. Dr. Hamilton was once told by an elderly bachelor, a wise man whose impressions were worth listening to, that the matrimonial barque is usually wrecked on the rock of finance. He thinks that the old gentleman overstated the importance of marital economics as a source of discontent; but he found himself that while in his group 54 per cent. of the women whose husbands had an annual income exceeding 5000 dollars had relatively high satisfaction with the marriage as a whole, only 36 per cent. of those whose husbands had a smaller income enjoyed such satisfaction. The corresponding figures for the men of his study, however, suggest that their marital satisfaction was much less dependent on size of income than was that of the women.<sup>3</sup> The answer which was given to his ques-

<sup>1</sup> Jessie Bernard, 'Factors in the Distribution of Success in Marriage', in *American Journal of Sociology*, xl. (Chicago, 1934), p. 58.

<sup>2</sup> G. A. Bartlett, *Men, Women and Conflict* (New York, 1931), p. 211.

<sup>3</sup> Hamilton, *op. cit.* pp. 84, 97 sq.

tion, "If your parents did not get along well together, what was the chief source of friction between them?" also throws some light upon modern American marriages: by far the most frequent answer was that the father's economic inadequacy was the chief cause.<sup>1</sup> While in the lower strata of the population the economic conditions may constitute a serious obstacle to conjugal happiness, the desire to increase the property may exert an unfavourable influence among the higher classes. Judge Bartlett writes: "Modern couples are money-conscious, whether rich or poor. Not one in ten divorce cases entirely omits the money problem. . . . Too much money is just as bad as too little money. Women are probably more sensitive about domestic finances than men are".<sup>2</sup> Another American writer remarks that the economic interests which once tended to draw together the members of a particular family group are now frequently the cause of emotional separation, suspicion, jealousy, and open antagonism.<sup>3</sup>

The financial situation of the family may be improved by income earned by the wife outside the home. Whether this is conducive to domestic happiness or not, depends on various circumstances. It may be extremely bad both for the wife as mother and for the child. Reid, the medical officer of health for Staffordshire, where there are two large centres of artisan population with identical health conditions, has shown that in the northern centre, where a very large number of women are engaged in factories, still-births are three times as frequent as in the southern centre, where there are practically no trade employments for women; and the frequency of abnormalities is also in the same ratio.<sup>4</sup> So disastrous consequences might presumably be averted by proper legislative

<sup>1</sup> *Ibid.* p. 239.

<sup>2</sup> Bartlett, *op. cit.* pp. 201, 220.

<sup>3</sup> E. R. Groves, *The Marriage Crisis* (London, etc., 1928), p. 49.

<sup>4</sup> Reid, quoted by Ellis, *op. cit.* vi. 6.



measures. In Soviet Russia, both before and after birth the mother (whether married or not) is given time away from work, ranging from six to eight weeks, with pay and with medical attention; and in addition to her full pay she receives an extra stipend for food. After she returns to work she is permitted a half-hour in every three and a half hours to feed and care for her child.<sup>1</sup> But there can be no doubt that in normal cases the mother's employment is antagonistic to the interests of the child; and it may be so even when the child grows older. It tends to weaken the ties between the members of the family; and the home may be badly managed.

The relation between husband and wife may be disturbed for other reasons as well. The idea that a man shall support his wife may be so ingrained in the husband's mind that he feels himself degraded by her employment, and at the same time he may fear the loss of caste in the eyes of other men. That idea, says Dr. Goodsell, "may be reinforced by a feeling of active dislike of his wife's financial independence, and by carking jealousy of her success if it be too pronounced".<sup>2</sup> Dr. Hamilton found that among his group of married men and women there was a smaller percentage of satisfied spouses in the families in which the wife had an extra-domestic vocation than in those in which she had none.<sup>3</sup> In her study of several hundred situations Lorine Pruette noticed that husbands of little education tended to be least sympathetic towards careers for their wives, whereas those having more education were more liberal in their attitude.<sup>4</sup>

<sup>1</sup> V. F. Calverton, *The Bankruptcy of Marriage* (London, 1931), p. 233.

<sup>2</sup> W. Goodsell, *A History of Marriage and the Family* (New York, 1934), p. 520. Cf. Mowrer, *op. cit.* p. 269.

<sup>3</sup> Hamilton, *op. cit.* p. 517.

<sup>4</sup> Lorine Pruette, quoted by Nimkoff, *op. cit.* p. 410 sq.



The wife's experiences in the workaday world should tend to make her a more interesting companion. To the wife herself her employment outside the family may offer obvious advantages. It may give her an opportunity to exercise her talents in a more stimulating field than domestic occupations, it renders her more independent of her husband, it makes the dissolution of an unsuccessful marriage easier for her. Dr. Olga Knopf goes so far as to say that "for a married woman to have an occupation, paid or unpaid, outside of the home is one of the best ways, possibly *the* best way, to guarantee happiness in marriage. For an unmarried woman it is a vital necessity".<sup>1</sup> It is alleged in Germany that the way to marriage is usually over an occupation, except among particularly well-to-do people; in Berlin three-fourths of the women who married in 1925 had a vocation.<sup>2</sup> In Stockholm, according to preliminary information received in connection with the census taken in 1930, about 27 per cent. of the married women had some occupation which was a source of income. "In the new family", say Alva and G. Myrdal, "in the same manner as in the old patriarchal one, the wife will stand beside her husband as his companion also in productive activity".<sup>3</sup>

In some cases the evils resulting from an unfortunate choice of partner may be avoided by a more careful selection, but in other cases the incompatibility can only be expected to become apparent afterwards. Marriage is always something of an adventure. Where two persons are brought into so close contact with, and into such constant dependence on, each other it would be

<sup>1</sup> Olga Knopf, *The Art of Being a Woman* (London, 1932), p. 112.

<sup>2</sup> Dr. Guradze, 'Heiraten Frauen oder Mädchen in Berlin ohne Beruf?' in *Zeitschrift für Sexualwissenschaft*, xiv. (Berlin & Köln, 1927), p. 23 sq.; A. König, 'Mutterschaft und Erwerbstätigkeit', *ibid.* xiv. 312 sq.

<sup>3</sup> Alva and G. Myrdal, *Kris i befolkningsfrågan* (Stockholm, 1934), pp. 313, 319.

little short of a miracle if their wills always acted in complete unison. In modern civilisation, where life is becoming richer in interests and individual differences are getting more accentuated, the causes of disagreement are multiplied and the frictions are apt to become more serious and, consequently, more likely to end in a rupture of the marriage tie. The idea that it is a right, or even a duty, to assert one's own individuality is characteristic of our age. As Lord Bryce observes, "the desire of each person to do what he or she pleases, to gratify his or her tastes, likings, caprices, to lead a life which shall be uncontrolled by another's will—this grows stronger. So, too, whatever stimulates the susceptibility and sensitiveness of the nervous system tends to make tempers more irritable, and to produce causes of friction between those who are in constant contact. . . . It is temper rather than unlawful passion that may prove in future the most dangerous enemy to the stability of the marriage relation".<sup>1</sup> A "better temper" was the most prominent change of mental qualities that the men of the Hamilton group wished in their wives, and the women who had the same wish with regard to their husbands were only slightly less numerous than those who complained of the latter being too "selfish" or not enough "talkative".<sup>2</sup>

Women's emancipation has undoubtedly a share in bringing about matrimonial unhappiness among the cultivated classes of our time.<sup>3</sup> In former days when, in accordance with the Christian doctrine, the husband was the head of the wife, she had to adapt herself to him; and community of life and collaboration are

<sup>1</sup> Lord Bryce, *Studies in History and Jurisprudence*, ii. (Oxford, 1901), p. 463.

<sup>2</sup> Hamilton, *op. cit.* p. 76.

<sup>3</sup> Cf. R. Pyke, 'Husbands and Wives', in *The Cosmopolitan*, xxxii. (New York, 1902), p. 613 *sqq.*; C. Jørgensen, *Erotikens etik* (Köbenhavn, 1926), pp. 10, 11, 76 *sqq.*; B. Russell, *Marriage and Morals* (London, 1929), p. 112.



generally easier between a superior and a subordinate than between two equals. There is, fortunately, no reason whatever to suppose that women in the future will fall back into their former state of subjection—their independence will presumably become still more complete than it is at present—but this does not imply that married life will become more difficult. On the contrary, I think it will rather smooth down when the memory of wrongs suffered in the past has faded, and there is no reason, and consequently no inclination, to emphasise rights already gained. I even believe that certain feminine traits which the movement of emancipation tended somewhat to obscure will again demand their due in full. Wives' subjection to their husbands was, of course, in the first place the result of the men's instinctive desire to exert power and of the natural inferiority of women in such qualities as are essential for personal independence. Generally speaking, the men are their superiors in strength and courage, and have therefore been not only the protectors of their wives, but also their masters. But at the same time there are in the sexual instinct elements which are apt to lead to domination on the part of the man and to submission on the part of the woman.

In courtship, animal and human alike, the male plays the more active, the female the more passive part. During the season of love the males even of the most timid animal species engage in desperate combats with each other for the possession of the female, and there can be no doubt that our primeval human ancestors had in the same way to fight for their wives; even now this kind of courtship is far from being unknown among savages.<sup>1</sup> Moreover, the male pursues and tries to capture the female, and she, after some resistance, finally surrenders herself to him. The sexual impulse of the male is thus connected with a desire to win the

<sup>1</sup> *The History of Human Marriage*, i. 462 sqq.



female, and the sexual impulse of the female with a desire to be pursued and won by the male. In the female sex there is consequently an instinctive appreciation of manly strength and courage; this is found in most women, and they may enjoy the display of manly force even when it turns against themselves. It is said that among the Slavs of the lower class the wives feel hurt if they are not beaten by their husbands; that the peasant women in some parts of Hungary do not think they are loved by their husbands until they have received the first box on the ear; that among the Italian Camorristi a wife who is not beaten by her husband regards him as a fool. Havelock Ellis believes that the majority of women would probably be prepared to echo the remark made by a woman in front of Rubens' 'Rape of the Sabines', "I think the Sabine women enjoyed being carried off like that". The same judicious student of the psychology of sex observes: "While in men it is possible to trace a tendency to inflict pain, or the simulacrum of pain, on the women they love, it is still easier to trace in women a delight in experiencing physical pain when inflicted by a lover, and an eagerness to accept subjection to his will. Such a tendency is certainly normal. To abandon herself to her lover, to be able to rely on his physical strength and mental resourcefulness, to be swept out of herself and beyond the control of her own will, to drift idly in delicious submission to another and stronger will—this is one of the commonest aspirations in a young woman's intimate love-dreams".<sup>1</sup> Van de Velde quotes Michelet's statement that "a woman's torment is not the man's tyranny—but his indifference".<sup>2</sup>

Although hardly any mutual interest could unite a

<sup>1</sup> Ellis, *op. cit.*, 'Analysis of the Sexual Impulse, etc.' (1903), pp. 66, 67, 74 sq. Cf. W. Stekel, *Die Geschlechtskälte der Frau* (Berlin & Wien, 1927), p. 473.

<sup>2</sup> Th. H. van de Velde, *Ideal Marriage* (London, 1928), p. 49.

married couple more closely than the love and care for their children, there are very many cases in which children are no unmixed blessing in conjugal life. They are not always desired. We are told by experienced observers that numbers of marriages are wrecked by the fear of, or by the complications arising from, unwanted pregnancy. The husband fears it either because he does not care for children or because he cannot afford them; the wife fears the pain in addition to the fears complementary to those of the husband. There are also married people who are averse to having children for fear lest the presence of a child should interfere with their love for each other.<sup>1</sup> Dr. Hamilton's question whether there was or had ever been any friction between the spouses in the matter of having children, was answered in the affirmative by 12 per cent. of the men and 15 per cent. of the women belonging to his group; while 12 per cent. of the latter declared that pregnancy exercised a weakening influence upon their friendly feelings towards their husbands.<sup>2</sup> To have many children taxes the strength of the wife, and is apt to aggravate the financial situation of the family. Instead of being a strong bond between the parents, the existence of children may cause tension or discord between them: there may be disagreement as to their management, or the woman may neglect the man or the man the woman on account of the children claiming the whole interest. Finally, children's relations with their parents, or their behaviour in other respects, may be very disturbing factors in the life of the family.

However real and frequent these difficulties are, I nevertheless think that some of them have been exaggerated by certain writers. I cannot endorse Mr. Ludovici's opinion that "children, far from cementing the affection existing between their parents, are rather

<sup>1</sup> W. Stekel, *op. cit.* p. 493.

<sup>2</sup> Hamilton, *op. cit.* p. 124 *sq.*



inclined to supply its most potent and infallible corrosive".<sup>1</sup> Dr. Bjerre says that there are few things that separate man and woman so much as does the child, owing to disagreements as to the management of it.<sup>2</sup> This statement, which evidently refers to family life in Sweden, is certainly not confirmed by my own experience among the Swedes of Finland; and in the answers given to Dr. Hamilton's various questions as to the chief cause of marital trouble in his group of American men and women, disagreement with regard to the management of the children plays a negligible part, varying between 0·5 and 1·5 per cent. of the total number of answers.<sup>3</sup> Another American author, Mr. Calverton, writes: "The old family has decayed. The old home has been replaced by the movie, the club, the dance-hall. Home has become a place to dine and die. The sentimental hymn of Payne—'There's no place like Home'—has been converted into 'There's no place like home—thank God'".<sup>4</sup> If this statement is meant to imply a general rupture of family ties, it is contradicted by the large percentage—amounting to more than 50 per cent.—of affirmative answers given to Dr. Hamilton's questions, "Were you and your father always on friendly terms while you lived at home? Are you still on such terms?" and to the corresponding questions relating to the mother.<sup>5</sup> Another American writer, Dr. Collins, while admitting that children often cause their parents much sorrow, nevertheless affirms that "more than virtue ever was, parenthood is its own reward".<sup>6</sup> From papers written by about 1700 male

<sup>1</sup> A. M. Ludovici, *Woman: A Vindication* (London, 1923), p. 181.

<sup>2</sup> P. Bjerre, *Äktenskapets omdaning* (Stockholm, 1928), p. 161 sq.

<sup>3</sup> Hamilton, *op. cit.* pp. 61, 66, 72, 74.

<sup>4</sup> V. F. Calverton, *The Bankruptcy of Marriage* (London, 1931), p. 23.

<sup>5</sup> Hamilton, *op. cit.* p. 230 sq.

<sup>6</sup> J. Collins, *The Doctor Looks at Love and Life* (London, 1926), p. 57 sq.



and 400 female pupils at professional schools in Berlin on the subject, "What does my family mean to me?" the conclusion was drawn that, in spite of frequent tensions and even ruptures of family ties, the proletarian youth in Germany are, in general, attached to their families.<sup>1</sup>

According to Freud the son is hostile to his father, even wishing his death, because the father is a rival of his son in the latter's incestuous love of his mother; and the daughter is similarly hostile to her mother because the mother is a rival of her daughter in the latter's incestuous love of her father. These feelings are supposed to be rooted deep in the unconscious part of the mind, but also to appear in the conscious part and be discernible by ordinary observation. We all know that frictions do occur between a son and his father and between a daughter and her mother; but, as I have pointed out in another book, there is no reason whatever to attribute them to sexual jealousy.<sup>2</sup> Dr. Hamilton asked the men of his group if they had any memories of childish jealousy of their mother and of hostility toward their father-rival, and the women if they had any memories of childish jealousy of their father and of hostility toward their mother-rival. Seventy-eight per cent. of the men and 68 per cent. of the women answered that they had no such jealousy; while 7 per cent. of the men mentioned jealousy directed against the father, the mother being the beloved object, and 6 per cent. of the women mentioned jealousy directed against the mother, the father being the beloved object.<sup>3</sup> But there is no indication that, in these cases, the jealousy was connected with infantile sexuality. A boy may, in his love

<sup>1</sup> G. Krolzig, 'Der Jugendliche in der Grossstadtfamilie', reviewed in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xviii. (Berlin & Köln, 1931), p. 339 sq.

<sup>2</sup> 'The Oedipus Complex', *passim*, in *Three Essays on Sex and Marriage* (London, 1934).

<sup>3</sup> Hamilton, *op. cit.* p. 484 sq.

for his mother, be jealous of his father, jealous of one of his brothers or sisters, jealous even of a dog to which his mother pays attention; and a girl may similarly, in her love for her father, feel jealousy associated with every possible variety of sympathetic feeling. It is also interesting to note that among those in the group who stated that they were always on friendly terms with their father the percentage of men were higher than the percentage of women.<sup>1</sup>

Conflicts between parents and children are more frequent in modern civilisation than they used to be. Parental, or paternal, authority and filial submission reached its height among peoples of archaic civilisation,<sup>2</sup> and the old notions of parental rights and filial duties have left traces that still survive, especially in Latin countries. Many parents concern themselves about the doings of their children in a way that displeases the latter, but instead of yielding to their will, as they would have done in former days, the children revolt against the interference. Just as the emancipation of woman has tended to increase the frictions between husband and wife, so has the emancipation of the child tended to increase the frictions between parents and children. But in this case, also, there is reason to believe that when one party will no longer try to assert his old rights, nor be suspected of trying to do so, the spirit of opposition will cool down in the other party. The duty of obedience will be replaced by a tendency to give a more willing ear to a good advice, and the duty of reverence by natural regard and affection. I have noticed that a distinct change in this direction has taken place, in the course of my lifetime, in my own surroundings.

Of all troubles arising from the existence of children those which are due to unwanted births are most easily remedied, and have already been so to a very large

<sup>1</sup> Hamilton, *op. cit.* p. 230.

<sup>2</sup> *The History of Human Marriage*, i. 326 *sqq.*



extent. The knowledge of birth control makes it practically possible for married couples to have no more children than they want. At present there is no absolutely reliable method of contraception, but there are methods that approach perfection, and there will presumably be such as reach it. Many of the cases of failure, however, are to be ascribed not to the contraceptives themselves but to the wrong use of them, due either to carelessness or to ignorance or half-knowledge, which might be removed by proper instruction. The limitation of the number of children in a family not only prevents debility in the mother resulting from too frequent child-bearing and may ward off economic difficulties: it also enables the mother to bestow more care on the children, tends to improve their physique, and gives them a better chance of life. From material collected in Germany it appears that the more children are born in a family, the smaller is the percentage of those who will remain alive;<sup>1</sup> Hamburger found that the percentage of deaths was 23 in families with one child, 51 in families with eight children, and 69 when the number of children exceeded fifteen.<sup>2</sup> It should also be noticed that the use of contraceptives is the best preventive against abortion; it is particularly for this reason that, in Soviet Russia, instruction in contraception may be obtained freely by anyone seeking it.<sup>3</sup>

At the same time birth control, if carried to excess, may be bad for the family. It is a common opinion that it is unfortunate for a child to be the only one. Olga Knopf writes: "Often he will never find his way

<sup>1</sup> P. W. Siegel, *Gewollte und ungewollte Schwankungen der weiblichen Fruchtbarkeit* (Berlin, 1917), p. 131 sqq.

<sup>2</sup> Hamburger, quoted by G. Marañón, *Tres ensayos sobre la vida sexual* (Madrid, 1927), p. 102. See also *ibid.* p. 101.

<sup>3</sup> Fannie W. Halle, *Die Frau in Sowjetrussland* (Berlin, etc., [1932]), p. 202; Margaret Sanger, 'Birth Control in Soviet Russia', in *Birth Control Review*, June 1935 (New York), p. 3.



to meet the external world independently. He expects that others will be indulgent to him as his parents were. . . . Very probably, he has not had as much experience as children of larger families in meeting others whom he can consider as equals. He did not learn to work with others and to play with them; he did not learn the give-and-take of social life. In married life the only child will expect the same interest, the same attention from his partner that he received from his parents; and he will expect it to be given without a return. In consequence, the marriages of only children are often a failure".<sup>1</sup> Many family social workers recommend that it is wiser to adopt a second child if parents can have but one child of their own.<sup>2</sup> Dr. Hamilton's findings, again, suggest that men who have sisters and women who have brothers are more likely to be satisfied with their spouses than those who have none.<sup>3</sup> The opinion that it is a disadvantage to be an only child, however, is not universally shared:<sup>4</sup> such a child has, for instance, been said to excel in intelligence. But Busemann's investigations in a school at Greifswald for middle-class children gave the result that the least teachable pupils were those who had no brothers or sisters and those who had a large number of them, while the best pupils were those who had two or three.<sup>5</sup>

Other arguments have been adduced against birth control in all circumstances. I have already spoken of the condemnation of it on religious grounds. A

<sup>1</sup> Knopf, *op. cit.* p. 52. Cf. R. C. and F. W. Binkley, *What is Right with Marriage?* (New York & London, 1929), p. 179.

<sup>2</sup> M. F. Nimkoff, *op. cit.* p. 347.

<sup>3</sup> Hamilton, *op. cit.* p. 534.

<sup>4</sup> See J. K. Folsom, *The Family* (New York & London, 1934), p. 509 *sq.*

<sup>5</sup> M. Marcuse, 'Eugenische Tagung zu Berlin, 26.-28. Oktober 1928', in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xv. (Berlin & Köln, 1928), p. 416.

moral argument is that it is apt to promote sexual licence outside of marriage by removing the danger of conception. It is further argued that it lowers the quality of the population by being practised more extensively by the upper classes, who generally carry better hereditary factors, than by the lower ones. The best remedy for this would of course be to disseminate knowledge concerning contraceptives among the latter; but this would clash with another principle, to which much weight is attached, namely, that the population must not be lowered in quantity. Fear of this has led to prohibitory laws in various countries. But neither religion nor law has been able to prevent birth control from being practised on an enormous scale, of which the great drop in the birth-rate bears significant evidence. It is obvious that those who condemn it are defending a lost cause. Nowadays it is practised among all classes;<sup>1</sup> but we may hope that there will be a time when it is least prevalent in the best parts of the population. Professor Carr-Saunders, in his Galton lecture, laid it down as a task for eugenists to urge and encourage those sections of the nation (irrespective of income) that are physically and mentally best endowed to regard children as voluntary contributions to the State which they ought to make.

Another eugenic measure has been recommended, which might save marriage from much harm and at the same time benefit the State, namely, the demand of health certificates before marriage, that should be a necessary legitimation of it in the eyes of the civil and religious authorities. There are different opinions among eugenists on the question whether the time is come for embodying such a demand in legal codes.

<sup>1</sup> F. Burgdörfer, quoted in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xvi. (Berlin & Köln, 1929), p. 67; H. Sellheim, 'Was muss der Arzt von der Regulierung der Fortpflanzung wissen?' *ibid.* xviii. (1931), p. 349.



Sexologists like Moll,<sup>1</sup> Hirschfeld,<sup>2</sup> Muckermann,<sup>3</sup> and Havelock Ellis,<sup>4</sup> maintain that we do not yet know enough about the principles of heredity and the transmissibility of pathological states to enable us to formulate sound legislative proposals on this basis. Ellis even doubts that there should ever be any legal compulsion in the matter. He argues that "an explicit prohibition to procreate within marriage is an implicit permission to procreate outside marriage", and that the undesirable procreation, instead of being carried out under the least dangerous conditions, is then carried out under the most dangerous conditions.<sup>5</sup> "Force is helpless here", he says; "it is education that is needed, not merely instruction, but the education of the conscience and will, and the training of the emotions".<sup>6</sup> I fear, however, that it is rather sanguine to credit the mass of people—even if the necessary knowledge could be instilled into them—with the necessary caution and self-control. Dr. Ellis points out that a man may be passionately in love with a woman of lower class than himself but seldom marries her, and thinks that "it needs but a clear general perception of all that is involved in heredity and health to make eugenic considerations equally influential".<sup>7</sup> But in the former case there are obvious selfish reasons to refrain from marriage, whereas the perception of possible diseugenic consequences may easily fail to exercise any influence at all.

<sup>1</sup> A. Moll, 'Der "reaktionäre" Kongress für Sexualforschung', *ibid.* xiii. (Bonn, 1927), p. 328.

<sup>2</sup> Hertha Riese, 'Der internationale Kongress in Kopenhagen der Weltliga für Sexualreform', *ibid.* xv. 339.

<sup>3</sup> Marcuse, *ibid.* xv. 419.

<sup>4</sup> Ellis, *op. cit.* vi. 621.

<sup>5</sup> *Ibid.* vi. 626, 622. A similar argument has been adduced by M. Fraenkel, 'Künstliche Sterilisierung', in A. Weil, *Sexualreform und Sexualwissenschaft* (Stuttgart, 1922), p. 229.

<sup>6</sup> Ellis, *op. cit.* vi. 624.

<sup>7</sup> *Ibid.* vi. 629.



Eugenic instruction and medical examination and advice are, of course, exceedingly desirable preliminaries to marriage. In various countries there are nowadays special consultation bureaus intended to give such advice, and they seem to do useful work;<sup>1</sup> though Moll may be right in saying that the family physician is the best counsellor on account of his intimate knowledge of the attendant circumstances of the case.<sup>2</sup>

<sup>1</sup> See E. Zacharias, *Die Gesundheit der Familie und des Volkes, das Ziel der ärztlichen Eheberatung* (Berlin, 1928); F. K. Scheumann, *Eheberatung, Einrichtung, Betrieb und Bedeutung für biologische Erwachsenenberatung* (Berlin, 1928); *idem*, 'Sinngemässe Ausgestaltung von Fortpflanzungshygiene und Eheberatung', in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xvii. (Berlin & Köln, 1930), p. 23 *sqq.*; Sellheim, *ibid.* xviii. 359.

<sup>2</sup> Moll, *ibid.* xiii. 328.

## CHAPTER VI

### TRIAL, COMPANIONATE, AND TEMPORARY MARRIAGE— CONCUBINAGE

NOTHING could be more conducive to harmonious relations between husband and wife than intimate pre-marital experience of each other, with reference to sexual compatibility, mental compatibility and other factors connected with the community of married life, and procreation. The importance of such experience has been recognised from very ancient times.

Among many savage peoples there is a regular marriage upon trial before the union becomes definite, the bridegroom either taking the girl to his own house or going himself to stay with her parents for a certain length of time.<sup>1</sup> The latter happens where a wife is obtained by services rendered to her father. The practice of serving for a wife is no doubt in a large measure due to the unwillingness of the father to give his daughter in marriage for nothing, but it also has another meaning: the period of service may be intended to test the young man's ability to work and to show whether he is an acceptable husband and son-in-law.<sup>2</sup> "His endurance, patience, and meekness, his adroitness as a hunter, and his zeal and frugality as a herdsman, are tested. The bride's father gives his assent to the marriage only after the bridegroom

<sup>1</sup> E. Westermarck, *The History of Human Marriage*, i. (London, 1921), p. 135.

<sup>2</sup> *Ibid.* ii. 373 sq.



has stood the probation well".<sup>1</sup> During his term of service he may or may not have access to the girl.<sup>2</sup> As I have pointed out before, among savages pre-nuptial relations frequently have the character of a trial by which the lover ascertains that the woman will gratify his desire for offspring, and in such a case marriage is not concluded before the birth of a child or until there are signs of pregnancy.<sup>3</sup>

Trial marriage has been and is still practised on a large scale in Europe. In Scotland, prior to the Reformation, it existed as a genuine custom called "hand-fasting". At the public fairs men selected female companions with whom to cohabit for a year. At the expiry of this period both parties were accounted free; they might either unite in marriage or live singly.<sup>4</sup> A similar custom existed in Ireland, in a very rude form;<sup>5</sup> and the Welsh, according to Giraldus Cambrensis, did not marry until they had tried, by previous cohabitation, the disposition and particularly the fecundity of the person to whom they were engaged.<sup>6</sup> At the present day trial marriage is a widespread custom among the rural population of Teutonic countries; German peasants are heard to say that no one wishes "to buy a pig in a poke", that "one does not buy even a penny pipe without trying it".<sup>7</sup> In

<sup>1</sup> W. Jochelson, *Koryak* (Leiden & New York, 1908), p. 740.

<sup>2</sup> *The History of Human Marriage*, ii. 363. <sup>3</sup> *Supra*, p. 21.

<sup>4</sup> C. Rogers, *Scotland, Social and Domestic* (London, 1869), p. 109. See also J. G. Dalyell, *The Darker Superstitions of Scotland* (Edinburgh, 1834), p. 283.

<sup>5</sup> G. L. Gomme, 'Exogamy and Polyandry', in *Archæological Review*, i. (London, 1888), p. 391.

<sup>6</sup> Giraldus de Barri, *The Itinerary of Archbishop Baldwin through Wales*, A.D. MCLXXXVIII., ii. (London, 1806), p. 346.

<sup>7</sup> W. Rudeck, *Geschichte der öffentlichen Sittlichkeit in Deutschland* (Jena, 1897), pp. 146, 403 *sqq.*; E. H. Kisch, *Die sexuelle Untreue der Frau* (Bonn, 1918), i. 157 *sq.*, ii. 122; H. Ellis, *Studies in the Psychology of Sex*, vi. (Philadelphia, 1923), p. 382; M. Marcuse, *Handwörterbuch der Sexualwissenschaft* (Bonn, 1923), p. 278 *sq.*

various parts of Germany 40 or 50, nay in certain districts as many as 90, per cent. of all legitimate first-born children are conceived before marriage.<sup>1</sup> The custom of free unions, usually rendered legal before or after the birth of children, seems to be fairly common in many, or perhaps all, rural parts of England; and the union, if found satisfactory, is made legal even when there is no prospect of children. In some counties it is said to be almost a universal practice for the women to have sexual relationships before legal marriage; sometimes the woman marries the first man whom she tries, and sometimes she tries several before the man who suits her.<sup>2</sup> Clara Collet says that among the poorer half of East London, "in a large number of cases, the legal ceremony only takes place, if it takes place at all, in time to legitimise the offspring of the union".<sup>3</sup>

Unions having the character of trial marriages are widely spread also where they are not actually sanctioned by custom, though looked upon with toleration or winked at; and they are spreading more and more among the upper classes. According to Judge Bartlett, it is in the United States a well-known and admitted fact that intercourse between engaged couples is definitely on the increase.<sup>4</sup> Of the one hundred married men and one hundred married women studied by Dr. Hamilton, who had attained a relatively high degree of culture, 33 men and 31 women acknowledged that they had indulged in the sex act with their spouse

<sup>1</sup> R. Michels, *Sittlichkeit in Ziffern?* (München & Leipzig, 1928), p. 30 sq.; A. König, 'Ungarische Regierungsmassnahmen gegen die Unsittlichkeit', in *Zeitschrift für Sexualwissenschaft*, xvi. (Berlin & Köln, 1927), p. 31; M. Marcuse, *Uneheliche Mütter* (Berlin, [1907]), p. 34.

<sup>2</sup> Ellis, *op. cit.* vi. 380.

<sup>3</sup> Clara E. Collet, *Educated Working Women* (London, 1902), p. 44.

<sup>4</sup> G. A. Bartlett, *Men, Women and Conflict* (New York & London, 1931), p. 160.



before marriage.<sup>1</sup> Professor Fetscher believes that in Germany sexual intercourse is extremely frequent among betrothed couples in all strata of society, and that it very often is practised without parental disapproval. He thinks the practice should be recognised by custom and law, if some stipulations are made in favour of the female partner.<sup>2</sup>

A similar proposal is made by Dr. Bjerre, who thinks that the present betrothal should be transformed into a special institution, having the same legal validity as marriage, although neither the conclusion nor the dissolution of it need be registered by the authorities.<sup>3</sup> So, too, the Rev. H. Lewis maintains that "a love affair should be recognised as a respectable, lawful union, which may be dissolved at any time. This should last at least two years before being legalised, and during these two years the couple should not have children—birth-control being available".<sup>4</sup> Dr. Parsons writes: "Truly monogamous relations seem to be those most conducive to emotional or intellectual development and to health, so that, quite apart from the question of prostitution, promiscuity is not desirable or even tolerable. It would therefore seem well, from this point of view, to encourage early *trial* marriage, the relation to be entered into with a view to permanency, but with the privilege of breaking it if proved unsuccessful and in the absence of offspring without suffering any great degree of public condemnation".<sup>5</sup>

<sup>1</sup> G. V. Hamilton, *A Research in Marriage* (New York, 1929), p. 373.

<sup>2</sup> R. Fetscher, 'Aus der Praxis der Eheberatung', in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xvi. (Berlin & Köln, 1929), p. 35.

<sup>3</sup> P. Bjerre, *Äktenskapets omdaning* (Stockholm, 1928), p. 177 *sqq.*

<sup>4</sup> H. Lewis, at the Protestant Episcopal Church Congress, San Francisco, June 1927, quoted by R. De Pomerai, *Marriage Past Present and Future* (London, 1930), p. 328.

<sup>5</sup> E. C. Parsons, *The Family* (New York & London, 1906), p. 349.



Professor Von Wiese sees no possibility of securing a really harmonious monogamous sex organisation without a time of trial, since at present everything is left to chance.<sup>1</sup> According to Dr. Havelock Ellis, trial marriages are demanded by prudence, as a precaution desirable both by uncertainty as to either the harmony or the fruitfulness of union until actual experiment has been made, and by the practical impossibility of otherwise rectifying any mistake in consequence of the antiquated rigidity of most European divorce laws; "and", he adds, "as foresight increases with the development of civilisation, and constantly grows among us, we may expect that there will be a parallel development in the frequency of trial marriage and in the social attitude towards such unions".<sup>2</sup> Dr. Bjerre heard a Swedish mother say that she would never allow her daughter to marry a man unless they had been living together for some time previously. He believes himself that when a man and a woman have been doing so, they will as a rule know whether they should marry or not; hence he regards divorce as an "antiquated conception".<sup>3</sup> But the unconventional domestic arrangement is not quite equivalent to marriage. According to Lorine Pruette, a considerable body of experience is accumulating to suggest that adjustment outside matrimony is no necessary guarantee of adjustment within the social, traditional institution of marriage, and that the happiness of two persons as lovers may work against, as well as for, their happiness as married partners.<sup>4</sup> Montaigne says that "few men have made a wife of a mistress, who have

<sup>1</sup> L. von Wiese, *Strindberg: Ein Beitrag zur Soziologie der Geschlechter* (München & Leipzig, 1918), p. 126 sq.

<sup>2</sup> Ellis, *op. cit.* vi. 379.

<sup>3</sup> Bjerre, *op. cit.* pp. 149, 165 sq.

<sup>4</sup> Lorine Pruette, in Ira S. Wile, *The Sex Life of the Unmarried Adult* (London, 1935), p. 297 sq.

not repented it. And even in the other world, what an unhappy life does Jupiter lead with his, whom he had first employed as a mistress? ”<sup>1</sup>

In the discussion of free unions outside ordinary marriage the so-called “companionate marriage” nowadays plays the most prominent rôle. This term was first used by Dr. M. M. Knight, who pointed out that because of changes which have taken place in modern civilisation certain very definite modifications have happened, almost without being noticed, producing the companionate and the family types; a marriage of the former type is a union of two people for sexual companionship without the intention of producing offspring.<sup>2</sup> The companionate marriage proposed by Judge Lindsey, with whose name that term is mainly associated, “is legal marriage, with legalised birth control and with the right to divorce by mutual consent for childless couples, usually without payment of alimony. . . . It is a state of lawful wedlock, entered into for love, companionship, and co-operation by persons who, for reasons of health, finances, temperament, etc., are not prepared at the time of their marriage to undertake the care of a family ”.<sup>3</sup> It is by no means an invention of a new kind of sexual relationships: what is new is merely the attitude taken towards a type of relationships already existing secretly, by frankly recognising them. Such a recognition would remove all the difficulties and deceits they now involve, and the risks of discovery and humiliation, and thus exercise a steadying and ennobling influence. It would constitute a new kind of marriage, from which many benefits might be expected. The companionate

<sup>1</sup> Montaigne, *Essais*, book iii. ch. 5.

<sup>2</sup> M. M. Knight, ‘The Companionate Marriage and the Family’, in *Journal of Social Hygiene*, x. (New York, 1924), no. 5.

<sup>3</sup> B. B. Lindsey and Wainwright Evans, *The Companionate Marriage* (London, etc., 1928), pp. v, 175.



would be well suited to the needs of women in the professions who do not wish to handicap themselves in their careers by the assumption of the conventional family obligations, but who do, nevertheless, desire the companionship offered by marriage. It would be well adapted to business and professional men whose income is not yet sufficient for the support of a family, but who do not wish to postpone marriage until such time as an adequate income is attained. It would be particularly useful to an ever-increasing number of young people, between the normal biological age of mating and the age at which marriage becomes an economic possibility; such as are still in college or in professional schools could be supported by their parents in the same way as before, and the young couples would continue their studies under more favourable conditions. Moreover, unfit couples would not commit the crime of bringing into the world children with an inferior physical or mental inheritance.<sup>1</sup>

But the companionate may also be a valuable preliminary to ordinary marriage. Judge Lindsey protests against the allegation that companionate marriage is a "trial marriage".<sup>2</sup> Yet it appears from many statements made by him that it is, to a large extent, supposed to serve the same purpose as marriage by trial. He says that couples who found in due time that they were fitted to remain together definitely, and to undertake the joint responsibility of children with a fair chance of carrying the big undertaking through happily and willingly, would deliberately have children. On the other hand, those who found by experience that they could not pull together that well, but found the

<sup>1</sup> Lindsey and Evans, *op. cit. passim*. Cf. Ruth Reed, *The Modern Family* (New York, 1929), p. 170 *sqq.*; Ellis, *op. cit.* vii. (1928), p. 499; *idem*, *More Essays of Love and Virtue* (London, 1931), p. 42; J. P. Lichtenberger, *Divorce* (New York & London), 1931, pp. 438, 443 *sqq.*

<sup>2</sup> Lindsey and Evans, *op. cit.* p. vi *sq.*



mere sexual bond satisfactory, would not bring into the world unwanted children who would lack the benefit of a happy home and of correct rearing.<sup>1</sup> "The tendency would be for men and women to enter Family marriage only on a basis of proved and steadfast love, whose quality had already been tested before the coming of children".<sup>2</sup> "In the freedom of the Companionate, people would have a safe opportunity to grow into each other's lives; and they would accomplish that object only if the elements of such growth were really present in their union. . . . The Family would thus crown their lives. It would have grown as grows the oak, slowly. The early Companionate would be a mere sapling beside it. And thus there would be created a home which would be a safe nest for children, and a sure refuge for the makers of it".<sup>3</sup> The companionate would tend to make marriage of the family type more stable: "We should avoid divorce, not by forbidding it to persons who unfortunately need it, but by seeing to it that permanent marriage can be contracted only under conditions which will give it a reasonable chance of success—a much bigger chance than it has at present. . . . The way to accomplish that is to make eroticism less and less the chief determining and controlling factor in people's choice of their mates".<sup>4</sup>

From these statements it is as plain as daylight that Judge Lindsey has not, as has been alleged,<sup>5</sup> aimed at undermining marriage, but on the contrary to strengthen it. Nor is there anything in the least revolutionary

<sup>1</sup> *Iidem*, *The Revolt of Modern Youth* (London, etc., 1928), p. 179.

<sup>2</sup> *Iidem*, *The Companionate Marriage*, p. 277.

<sup>3</sup> *Ibid.* p. 263 sq.

<sup>4</sup> *Ibid.* p. 274.

<sup>5</sup> See e.g. E. H. Pirkner, 'New Yorker Brief im Februar 1928', in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xv. (Berlin & Köln, 1928), p. 60 sq., referring to a sermon by Dr. S. S. Wise in Carnegie Hall.

in his proposals relating to birth control and divorce by mutual consent. The latter was permitted to childless couples by the Prussian code of 1794,<sup>1</sup> and is nowadays, in several European and Central American countries, permitted by law even to couples who have children.<sup>2</sup> But it is impossible for me to understand how Judge Lindsey could, with any hope of success, advocate the institution of a special kind of marriage, with the right of birth control and of divorce by mutual consent, in a country where both are prohibited by law?<sup>3</sup> How is it conceivable that the law could allow certain couples to do something that is forbidden to others, simply because they wish to do it, and in addition grant them another privilege denied to everybody else? Judge Lindsey recognises himself that the passing of three bills would establish the companionate, as we now illegally have it, on a legal basis: first, a bill for an Act

<sup>1</sup> *Allgemeines Landrecht für die Preussischen Staaten* (Berlin, 1828-32), § 716.

<sup>2</sup> *The History of Human Marriage*, iii. 353, 354, 360 n. *Infra*, ch. x.

<sup>3</sup> In a later article ('The Companionate Marriage', in *Birth Control Review*, 1931 [New York], p. 79) Judge Lindsey complains that "many intelligent people thought that companionate marriage (about the only kind the clergy perform) was some new kind of marriage". I cannot find that there has been, in this respect, any misunderstanding at all. These are his own words: "The licence to have children might be made supplementary to the marriage contract—which would be equivalent to saying that we would then have two kinds of marriage contracts, the one sanctioning the conception of children and the other merely sanctioning cohabitation" (*The Revolt of Modern Youth*, p. 180); "We should provide another type of marriage to meet this need (*i.e.* the need of an outlet permitted to the sex impulse other than marriage as we now have it). Whether society could wisely permit still other forms of sex liberty than the Companionate is a matter for the future" (*The Companionate Marriage*, p. 274). Sympathetic readers of Judge Lindsey's books, like J. Lichtenberger (*Divorce* [New York & London, 1931], p. 445) and Bertrand Russell (*Marriage and Morals* [London, 1929], p. 130), speak of his companionate marriage as "a new kind of marriage" or as "a new institution" (*ibid.* p. 129).



to repeal the present laws relating to birth control; secondly, a bill to amend the laws relating to divorce by adding a clause providing that "where couples are childless, and where the efforts of the magistrate to bring about a reconciliation have failed, and where the couple mutually desire divorce, the divorce shall be granted without further expense or needless delay"; thirdly, a bill to regulate the property status of the divorce, dealing with the right of the wife to support and alimony, which would be withheld or granted according to the conditions of the case.<sup>1</sup> Why, then, does not Judge Lindsey simply propose such changes of the law, instead of provoking terrific excitement by suggesting a new kind of marriage to exist side by side with the old one? Those changes should not be less attainable in his own country than they have proved to be elsewhere. The law prohibiting birth control is already a dead letter there, and it is well known that if a married couple desire divorce they can even now readily obtain it under a statutory regulation. But a clause introducing mutual consent as a ground of divorce might make it possible to dissolve a marriage without the assistance of a lawyer and to do it as cheaply as to conclude it. A democratic country like the United States should not wish divorce to be more difficult for the poor man than for the rich.

It seems quite hopeless to expect that any modern law would recognise a probationary union as a particular, lower form of marriage. The only thing that the law can do in the matter is not to prohibit such a union, and if any law nowadays does so it is not enforced. The respectability of trial unions depends entirely on the social attitude towards them, and this attitude depends on their frequency and on the opinions about their suitability. This is the way in which the sanction given them by rural custom has originated. But this sanction

<sup>1</sup> Lindsey and Evans, *The Companionate Marriage*, p. 245 sq.



has not the coarse form that a paragraph of the law would have. I have sufficient first-hand knowledge of those rural customs to know that there is considerable delicacy and secrecy about them. In certain modern books dealing with sex relationships concealment is looked upon as deceit and decency as hypocrisy. Mr. Calverton tells us that for the Modern Youth (always written with admiring capitals) "decency has lost its spell", and "cynicism has become the new faith".<sup>1</sup> Poor youth, unable to appreciate the flavour of an exquisite flower of life!

But while law hardly can recognise the trial union as a special institution side by side with ordinary marriage, it can incorporate its advantages by making divorce as easy as the dissolution of such a union. I cannot find that Dr. Bjerre's "free" marriage has much *raison d'être* in his own country, Sweden, where a judicial separation can be obtained by mutual consent and such a separation may, upon the application of either husband or wife, be converted into a divorce after one year. The chief difference between a "free" union dissolvable by mutual agreement and ordinary marriage would apparently consist in the absence of compulsory registration of the former, and this would be of very doubtful value. There is evidence of this in some experience gained in the United States. In almost half of the states no marriage licence is required, the union of a man and a woman being considered valid if they make public admission of their relationship, that is, if they live together as husband and wife and acknowledge their union to their neighbours. This so-called common-law marriage is said to lead to gross exploitation, because without a record of the marriage there is often legal uncertainty of the status of wife and children. Dr. Nimkoff remarks that the modern movement is

<sup>1</sup> V. F. Calverton, *The Bankruptcy of Marriage* (London, 1931), pp. 28, 31.

distinctly hostile to such marriage—to unions not publicly celebrated and recorded—and that they will presumably be outlawed in additional states.<sup>1</sup>

A very definite kind of trial marriage has been proposed by Dr. E. D. Cope, with a view to remove matrimonial changes from the domain of caprice and to permit them only after a full and fair trial. He maintains that this object can be attained by a system of civil marriage contracts which are of the same value and effect as the existing marriage contract, but run only for a definite time. The time limits of these contracts should increase rapidly in order to prevent women of mature years being deprived of support. The first contract ought not to run for less than five years, so as to give ample opportunity for acquaintance and for the recovery from temporary disagreements, and it should be terminable at the desire of either party. The second contract should run for ten or fifteen years, and should then lapse only by desire of both parties; and the third contract should provide for permanent relations. He thinks that “such a system would offer a safe opportunity for the correction of errors in matrimony, and a chance for the reorganisation and recommencement on a more hopeful basis of the lives of persons who have made such mistakes”.<sup>2</sup> In his work, *Die Wahlverwandtschaften*, Goethe gives utterance to the idea of a temporary marriage by the mouth of the Count, who advises one of his friends that every marriage should be contracted for the term of five years only. “This number”, he says, “is a beautiful, sacred, odd number, and such a period of time would be sufficient for the married pair to learn to know one another, to bring a few children into the world, to separate, and, what would be most beautiful of all, to come together again”.

<sup>1</sup> M. F. Nimkoff, *The Family* (Cambridge, Mass., 1934), p. 504.

<sup>2</sup> E. D. Cope, ‘The Marriage Problem’, in *The Open Court*, ii. (Chicago, 1888), p. 1322 sq.



The first two or three years at least would pass very happily. Then very likely one member of the pair would wish that the union should be prolonged; and this desire would increase the more nearly the terminus of the marriage approached. An indifferent, nay even an unsatisfied, member of such a union would be pleased by such a demeanour on the part of the other; and when the allotted time had passed away, they might find, with agreeable surprise, that it had been tacitly prolonged.<sup>1</sup> Even a Christian philosopher, Charles Secrétan, in his book, *Le droit de la femme*, approves of marriages contracted for a definite term of years.

Charlotte Burchow-Hohmeyer advocates such marriages, not as trial unions but as a solution of two particular social problems. She asks what provision could be made, within the existing social order, for the gratification on the one hand of man's polygynous disposition and on the other hand of woman's desire for motherhood, without giving offence to our ethical sentiments. Her answer is that this object could be attained by the institution of a *Zeitehe*, or temporary marriage, as a supplement to the present durable one. It might be limited to a period of five years, during which the husband had to be faithful to his wife and no divorce would be permitted; but the birth of a child would automatically extend the marriage by at least eight years. She hopes that such an arrangement would be helpful to young people and especially to the large number of women who otherwise would remain unmarried and barren. She admits that this temporary marriage may end as a tragedy for the wife, but she finds solace in the thought that transitory happiness is preferable to lifelong loneliness, and that the marriage of limited duration would chiefly be contracted by women to whom motherhood means more than the

<sup>1</sup> Goethe, *Die Wahlverwandtschaften*, pt. i. ch. x. (*Sämtliche Werke*, xxi. [Stuttgart & Berlin, Jubiläums-Ausgabe], p. 83 sq.).



durable companionship of a husband. At the same time such a marriage might also be converted into a permanent one.<sup>1</sup>

Marriages entered into for a fixed period are found among several uncivilised peoples;<sup>2</sup> and among the ancient Arabs too, according to Ammianus Marcellinus, marriages were often contracted for a term of definite length, after which the wife might withdraw if she pleased.<sup>3</sup> Somewhat of the same character is a temporary form of marriage which still exists in certain parts of Arabia.<sup>4</sup> The Shi'ah Moslems recognise as legal marriages contracted for a certain limited period—a day, a month, a year, or any other specified term. Such a temporary contract of marriage, which is called *mut'ah*, creates no right of inheritance in either party, although the children born of the union are legitimate and inherit from their parents like the issue of a permanent contract. The wife is not entitled to any maintenance unless it is expressly stipulated; the husband is entitled to refuse procreation, which he cannot do in ordinary marriages; and there is also this difference between a permanent and a temporary marriage, that in the case of the latter the husband has no power to divorce his wife, although the marriage may be dissolved by the mutual consent of the parties before the fixed period has expired.<sup>5</sup> This temporary form of marriage exists in Persia to the present day,<sup>6</sup> but is held to be unlawful by the Sunnīs.<sup>7</sup> Temporary

<sup>1</sup> Charlotte Burchow-Hohmeyer, *Zeitehe* (Berlin & Köln, 1928), *passim*. <sup>2</sup> E. Westermarck, *op. cit.* iii. 267.

<sup>3</sup> Ammianus Marcellinus, *Res gestæ*, xiv. 4, 4.

<sup>4</sup> G. A. Barton, *A Sketch of Semitic Origins Social and Religious* (New York, 1902), p. 47 *sq.*

<sup>5</sup> Ameer Ali, *Mahommedan Law*, ii. (Calcutta, 1908), p. 438 *sqq.*; Sara Kohn, *Die Eheschliessung im Koran* (London, 1934), p. 88 *sqq.*

<sup>6</sup> J. E. Polak, *Persien*, i. (Leipzig, 1865), p. 207 *sq.*; T. P. Hughes, *A Dictionary of Islam* (London, 1896), p. 424.

<sup>7</sup> Ameer Ali, *op. cit.* ii. 438.

marriages are recognised throughout Tibet, "whether contracted for six months, a month, or perhaps a week, and . . . those unions are not held immoral".<sup>1</sup> In Abyssinia, also, there are marriages entered into for a fixed period, at the end of which husband and wife separate.<sup>2</sup> In old Japan marriages could be contracted for five years in the case of persons of standing, and for a shorter term among the lower classes. We are told that it was very rare for a separation to take place when the term expired, and that such a separation hardly ever occurred if there were healthy children.<sup>3</sup>

Temporary marriage may no doubt offer certain advantages. It may serve as a security for women in countries where the husband can divorce an ordinary wife whenever he pleases, as he is allowed to do according to Mohammedan law and as he could practically do in ancient Japan.<sup>4</sup> It may also be a convenience to men like the pilgrims who tarry in Mecca for longer or shorter spaces of time, and can avail themselves of women who go there from Egypt for the avowed purpose of entering into such alliances.<sup>5</sup> But among ourselves the kind of marriage advocated by Dr. Cope and Charlotte Burchow-Hohmeyer, which should be contracted for a term of five years and be indissoluble during this period, would deprive both parties of a right granted to all other married people. How serious this loss might be is indicated by American statistics, according to which the trend seems to be for divorces to

<sup>1</sup> W. W. Rockhill, *The Land of the Lamas* (London, 1891), p. 212.

<sup>2</sup> J. Lobo, 'A Voyage to Abyssinia', in J. Pinkerton, *Collection of Voyages and Travels*, xv. (London, 1914), p. 26; Barton, *op. cit.* p. 48 sq.

<sup>3</sup> A. Wernich, quoted by I. Bloch, *The Sexual Life of Our Time* (London, 1908), p. 241.

<sup>4</sup> N. Hozumi, *Lectures on the New Japanese Civil Code* (Tokyo, 1912), p. 70 sq.

<sup>5</sup> C. Snouck Hurgronje, *Mekka*, ii. (Haag, 1889), pp. 5, 109 sq.



occur during the first few years of marriage:<sup>1</sup> in 1931, for instance, 43·3 per cent. of all divorces were obtained during the first five years of married life,<sup>2</sup> and the most common year for divorce is nowadays the fourth.<sup>3</sup> Very similar information comes from Sweden: the number of divorces which affected marriages of three or four years' duration was, in 1932, larger than the number of divorces that were related to any other corresponding group of marriages.<sup>4</sup> Another objection is that marriages for a term of years, as Dr. Ellis points out, would not commend themselves to young lovers, who believe that their love is eternal; "nor, so long as the union proves satisfactory, is there any need to introduce the disturbing idea of a legal termination of the contract".<sup>5</sup>

There are other schemes advocating the recognition of sexual associations existing side by side with marriage as alternatives more suitable for certain persons. Grete Meisel-Hess admits that marriage as the permanent union of one man and one woman drawn together by an intimate harmony of physical and mental qualities is and must remain the ideal. But "since the garden of marriage fosters so many inimical growths, while the free intimacy fails to provide a favourable environment for the processes of the sexual life, and since the fact can no longer be ignored that permissibility of a change of sexual partnerships is indispensable, there will inevitably arise a tendency to restore concubinage to the position which, in virtue alike of its history and of its future developmental possibilities, properly attaches to the

<sup>1</sup> Nimkoff, *op. cit.* p. 445.

<sup>2</sup> W. Goodsell, *A History of Marriage and the Family* (New York, 1934), p. 485.

<sup>3</sup> A. Cahen, *Statistical Analysis of American Divorce* (New York, 1932), p. 140.

<sup>4</sup> *Sveriges officiella statistik: Befolkningsrörelsen år 1932* (Stockholm, 1935), p. 44.

<sup>5</sup> Ellis, *op. cit.* vi. 472.

institution. . . . Concubinage is a temporary marriage, one that does not involve lifelong obligations, but is endowed with the most essential characteristic of marriage, namely, that the pair live openly together. . . . The old legal rights of concubinage must be restored; new duties must be imposed upon both the men and the women who enter into this relationship. . . . By the introduction of private contracts between the parties, formally made in the presence of a legally appointed official (such contracts as even to-day are entered into by the parties to not a few free-unions), provision must be made to safeguard the woman from an entirely unconditional surrender. . . . And new duties must be imposed also upon the community which is so deeply concerned in the results of such unions. If only for the reason that society cannot evade all responsibility for the offspring of those living in concubinage, the relationship must involve the legal enforcement of certain duties, and of duties far more extensive than that now imposed upon the father to maintain his illegitimate children ".<sup>1</sup> So also C. Gasquoine Hartley pleads for open recognition of partnerships outside of marriage, "not necessarily permanent, with proper provision for the woman and her children, should there be any, a provision . . . decided upon by the man and woman in the form of a contract before the relationships were entered upon". She thinks that in this way many marriages would be prevented which inevitably would come to disaster.<sup>2</sup>

A legally recognised concubinage would certainly imply the restoration of an ancient European institution. It occurred in Rome side by side with marriage.<sup>3</sup> It

<sup>1</sup> Grete Meisel-Hess, *The Sexual Crisis* (New York, 1917), pp. 60, 72 *sqq.*

<sup>2</sup> C. Gasquoine Hartley, *Women, Children, Love and Marriage* (London, 1924), p. 181.

<sup>3</sup> *Digesta*, i. 16. 144.



was also a recognised institution in Christian Europe. In Germany it existed throughout the Middle Ages;<sup>1</sup> and according to Jutland law a concubine who for three years had openly shared bed and board with a man became his wedded wife.<sup>2</sup> In England, late in the thirteenth century, Bracton speaks of the *concubina legitima* as entitled to certain rights and considerations;<sup>3</sup> and among the clergy it prevailed universally, although it was the object of unremitting assault from councils and prelates.<sup>4</sup> Elsewhere in Europe concubinage had so established itself among the clerical order that even the loftiest prelates shrunk from encountering the risk attendant upon an attempt to enforce the canons against it. In 1537 the Archbishop of Salzburg timidly suggested in a pastoral letter that if the clergy could not restrain their passions, they should at all events indulge them secretly, so that scandal might be avoided and the punishment of their transgressions be left to an avenging God.<sup>5</sup> In Spain, in the thirteenth and following centuries, all attempts to suppress clerical concubinage were likewise in vain.<sup>6</sup> It is easy to understand that where marriage is indissoluble, or as in the case of the Roman Catholic clergy, forbidden, concubinage is frequently resorted to and may, in spite of formal prohibitions, gain social recognition. In the State of South Carolina, where divorce is entirely prohibited, it has been necessary for the authorities to

<sup>1</sup> K. Weinhold, *Die deutschen Frauen in dem Mittelalter*, ii. (Wien, 1882), p. 16 sq.; W. Rudeck, *Geschichte der öffentlichen Sittlichkeit in Deutschland* (Jena, 1897), p. 171; W. Mittermaier, 'Konkubinats', in Marcuse, *Handwörterbuch der Sexualwissenschaft*, p. 279.

<sup>2</sup> 'Jyske Lov', i. 27, in *Danmarks gamle Landskabslove med Kirkelovene*, ii. (Köbenhavn, 1926), p. 68 sq.

<sup>3</sup> H. de Bracton, *De legibus et consuetudinibus Angliæ*, book ii. ch. 30 (vol. i. [London, 1878], p. 506); book iv. treat. vi. (vol. iv. [1881], p. 500).

<sup>4</sup> H. C. Lea, *History of Sacerdotal Celibacy in the Christian Church* (London, 1932), p. 244.

<sup>5</sup> *Ibid.* p. 445 sq.

<sup>6</sup> *Ibid.* p. 260 sq.

enact special legislation concerning the personal and property rights of extra-legal wives and children.<sup>1</sup> Mr. Fellows writes: "Concubinage is licensed in England, for no effective law forbids it. By reason of the unfairness of our divorce laws it is extremely prevalent".<sup>2</sup> There is thus a causal connection between the legislation concerning divorce and concubinage. Where the former is prohibitive, the latter has a useful function to fulfil, whereas a sufficiently liberal divorce law makes concubinage superfluous. Consequently, as there is reason to believe that in the future divorce will become as easy in the other Western countries as it already is in some of them, there is no reason to suppose that concubinage will reappear in our midst as a recognised social institution.

<sup>1</sup> Nimkoff, *op. cit.* p. 456.

<sup>2</sup> A. Fellows, *The Case against the English Divorce Law* (London, 1932), p. 234.



## CHAPTER VII

### FREE LOVE

PRE-MARITAL sexual intercourse is considered to be a desirable prelude to marriage not only when it has the character of a trial union with the future spouse, but also on account of the general erotic experience provided by it. Vatsayana mentions, among the men who succeed easily with the objects of their love, "men who are experienced in the art of making love; men who were once married but have lost their wife".<sup>1</sup> It is a fairly common opinion, especially in France, that the young man who is to become a steady husband should have enjoyed the pleasures of life to the full and, above all, gained experience in the sphere of love. Among the upper classes this experience is generally received from prostitutes; but in Adler's opinion, "the man who is not specially endowed by nature and experience for psychic intercourse with women, is not likely, through his earlier intercourse with Venus vulgivaga, to bring into marriage any useful knowledge, psychic or physical".<sup>2</sup> Havelock Ellis points out that such training may make him waver between two opposite courses of action, both of them mistaken. "On the one hand, he may treat his bride as a prostitute, or as a novice to be specially moulded into the sexual shape he is most accustomed to, thus running the risk either of perverting or of disgusting her. On the other hand,

<sup>1</sup> Vatsayana, *The Kama Sutra* (Amritsar, 1930), p. 233.

<sup>2</sup> O. Adler, *Die mangelhafte Geschlechtsempfindung des Weibes* (Berlin, 1911), p. 186 sq.

realising that the purity and dignity of his bride place her in an altogether different class from the women he has previously known, he may go to the opposite extreme of treating her with an exaggerated respect, and so fail either to arouse or to gratify her erotic needs".<sup>1</sup> Dr. Marie Stopes says that she knows of a man who, after a dissolute life, met a woman whom he revered and adored and eventually married; but to preserve her "purity"—her difference from the others—he never consummated his marriage with her, which made her strangely unhappy.<sup>2</sup> The same writer observes that the prostitute sometimes supplies an element which is not purely physical, and which is often lacking in the wife's relation with her husband, an element of charm and mutual gaiety in pleasure.<sup>3</sup>

It would seem that in order to gain really useful sex experience, a man should receive it from a woman who belongs, more or less, to his own class. Nowadays he does so, in some countries at least, to a considerable extent also among people of education. Lindsey, who was judge of the Juvenile Court in Denver for a period of twenty-six years and made it a laboratory for moral advice and instruction, states that 15 to 25 per cent. of those high-school girls who begin with hugging and kissing eventually "go the limit".<sup>4</sup> Of the one hundred married women in New York city studied by Dr. Hamilton, all of whom had attained a relatively high level of culture, 20 per cent. gave a history of pre-marital sex intercourse with men other than their husbands,<sup>5</sup> and of these a comparatively large number

<sup>1</sup> H. Ellis, *Studies in the Psychology of Sex*, vi. (Philadelphia, 1923), p. 523.

<sup>2</sup> Marie Stopes, *Married Love* (London, 1926), p. 55.

<sup>3</sup> *Ibid.* p. 174.

<sup>4</sup> B. B. Lindsey and Wainwright Evans, *The Revolt of Modern Youth* (London, etc., 1928), p. 62.

<sup>5</sup> G. V. Hamilton, *A Research in Marriage* (New York, 1929), p. 346.



belonged to the younger generation, which suggests, as he says, an increasing tendency toward sexual unconvictionality among the women.<sup>1</sup> But Dr. Hamilton's findings do not support the contention that pre-marital sex experience on the part of men is conducive to marital happiness; on the contrary, when correlating it with degree of satisfaction in marriage, he found that a higher percentage of those men who were virgins at marriage belonged to the satisfied group than did those who were not.<sup>2</sup> It is to be feared that the libertine sooner or later breaks loose again when married.

It is further contended that pre-marital sex relations even of a promiscuous kind may exercise a favourable influence upon marriage by delaying it. Balzac, in speaking of the danger of early marriages, quotes Rousseau's words: "There must always be a period of licence, at one age if not at another; a leaven is only bad which ferments too soon or too late".<sup>3</sup> Without such an outlet the sexual impulse may be too powerful to be restrained, and consequently lead to a premature and unhappy marriage. Or, if restrained, it may be the cause of much discomfort and even unhealth. On the question whether prolonged abstinence from sexual intercourse is injurious to physical and mental health or not, there is much diversity of opinion among medical writers; the result seems to differ considerably in different cases. As for the soothing of the sexual passion, it should be remembered that abstinence from sexual intercourse does not imply abstinence from all sexual activity. Nature has provided mankind with "sex safety valves" (to use Dr. Collins' phrase),<sup>4</sup> which are adequate if too much strain is not put upon

<sup>1</sup> *Ibid.* p. 383 sq.

<sup>2</sup> *Ibid.* pp. 393, 541 sq.

<sup>3</sup> *Supra*, p. 52.

<sup>4</sup> J. Collins, *The Doctor Looks at Love and Life* (London, 1926), p. 18 sq.

them; and practically all men and very many women strive for and obtain some form of orgasmic appeasement. However useful sexual intercourse may be to the unmarried it has also its disadvantages. It may give venereal disease to him who practises it; and it may be fraught with serious consequences also for the female partner, which the men are only too often apt to ignore.

One consequence is eventual pregnancy leading to childbirth, if not interrupted by abortion. The proportion of illegitimate births, while varying greatly in different countries, is much higher among the poor than among the well-to-do, and particularly high among the younger girls; in 1918, in the registration area of the United States, 45·2 per cent. of the unmarried mothers were under twenty years of age, while the nodal age for such girls was from eighteen to nineteen.<sup>1</sup> The girl has to pay for her *faux pas* in many ways. She is generally, at least among large strata of society, disgraced for ever, and may be treated as an outcast, even in the most pathetic circumstances. According to Carol Aronovici, five of the maternity hospitals in Philadelphia refused to take unmarried mothers and five others took them only in emergency cases. Of the thirty-one states that have enacted some form of mother's pensions twenty-nine extend the benefits only to mothers of legitimate children, whilst most of the others make such specifications with regard to good conduct in the community as to exclude the unmarried mother.<sup>2</sup> Illegitimate childbirth is a frequent cause of prostitution, both on account of the consequences of the mother's lost virginity and for economic reasons.<sup>3</sup> Nowadays she has generally the right to claim support for her child from its father. Even the famous French

<sup>1</sup> Ruth Reed, *The Modern Family* (New York, 1929), p. 138.

<sup>2</sup> *Ibid.* p. 136.

<sup>3</sup> M. Marcuse, *Uneheliche Mütter* (Berlin, [1907]), p. 80 sq.; A. Moll, *Handbuch der Sexualwissenschaften* (Leipzig, 1912), p. 391.



law according to which it was prohibited to inquire into the paternity of an illegitimate child was changed in 1912 into a prohibition of doing so only if the mother, during the legal period of conception, has led a notoriously bad life or is known to have had sexual intercourse with another man.<sup>1</sup> The German code makes a similar exception in the latter case only.<sup>2</sup> On the other hand, in Austria<sup>3</sup> and Hungary<sup>4</sup> the law knows no such *exceptio plurimum concumbentium*: if the mother has had several lovers she is permitted to select for herself which she chooses to make responsible for her child. But there are numbers of cases in which the girl, for some reason or other, can obtain no support at all from the father of her child;<sup>5</sup> in Berlin she could do so only in a third part of the cases of illegitimate birth, between the years 1904 and 1912.<sup>6</sup> And when she receives some support the amount of it is generally quite inadequate from the child's point of view.

The illegitimacy of birth affects the offspring even more than the mother. The death-rate for illegitimate infants is very much higher than that for legitimate ones: in various European countries it is about twice as great or almost so,<sup>7</sup> and in the cities in the United

<sup>1</sup> E. Wilhelm, 'Über die Rechte der unehelichen Kinder in Frankreich unter besonderer Berücksichtigung der Rechtslage in Elsass-Lothringen', in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xv. (Berlin & Köln, 1928), p. 21 sq.

<sup>2</sup> *Ibid.* xv. 22; J. Dück, 'Gegen die Begünstigung der Mutter in Vaterschaftsprozessen', *ibid.* xv. 354.

<sup>3</sup> *Ibid.* xv. 354 sq.

<sup>4</sup> A. König, 'Ungarische Regierungsmassnahmen gegen die Unsittlichkeit', *ibid.* xiv. (Berlin & Köln, 1927), p. 31.

<sup>5</sup> See e.g. R. Michels, *Sittlichkeit in Ziffern?* (München & Leipzig, 1928), p. 87.

<sup>6</sup> Annemarie Wulff, 'Das Schicksal der Unehelichen in Berlin', reviewed in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xv. (Berlin & Köln, 1929), p. 489.

<sup>7</sup> Michels, *op. cit.* p. 87 sqq.; Moll, *op. cit.* p. 431; Wulff, reviewed *loc. cit.* p. 489; L. D. Pesl, 'Fruchtabtreibung und Findelhaus', in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xv. (Berlin & Köln, 1928), p. 322; V. F. Calverton, *The Bankruptcy of*

States almost four times as great.<sup>1</sup> The cause of this is the unmarried mother's inferior economic and social conditions; "it is here society that operates and kills, not nature" (Rühle). Another result of them is the comparatively large number of criminals among the children of unmarried parents, who grow up in so unfavourable circumstances.<sup>2</sup> The way in which they have been treated in the Western world is a disgrace to its civilisation. Owing to Christianity's horror of sexual acts falling outside the monogamous marriage relation, the offspring of illicit intercourse were punished for their parents' sins with ignominy and loss of rights that belonged to other, more respectable members of the Church and the State. In Teutonic countries their position was much better in earlier times than subsequently, when the new religion made its influence felt, depriving them of all title to inheritance; and in some law-books they were treated as almost rightless beings, on a par with robbers and thieves.<sup>3</sup> There are still

*Marriage* (London, 1931), p. 188 sq.; G. May, *Social Control of Sex Expression* (London, 1930), p. 215; G. Modeen, 'Dödlighet och livslängd', in *Nya Argus*, xxvii. (Helsingfors, 1934), p. 181 (Finland).

<sup>1</sup> Reed, *op. cit.* p. 146.

<sup>2</sup> Moll, *op. cit.* p. 432; Wulff, reviewed *loc. cit.* p. 490; Frau Uhlmann, 'Jugendfürsorge und Sexualpädagogik', in A. Weil, *Sexualreform und Sexualwissenschaft* (Stuttgart, 1922), p. 268.

<sup>3</sup> E. Westermarck, *The Origin and Development of the Moral Ideas*, i. (London, 1912), p. 47; ii. (1917), pp. 49, 57, 431. It makes one smile to find that the most radical denial of illegitimate children's rights comes from a great philosopher. Immanuel Kant (*Metaphysische Anfangungsgründe der Rechtslehre*, § 49 [*Gesammelte Schriften*, vi. (Berlin, 1914), p. 335 sq.]), argues that as the infant has been born outside the law, it is not protected by the law. It has, as it were, crept into the community as contraband (*verbotene Waare*), and as it should not be there at all, the community may ignore both its existence and its destruction. He looks upon this as a dictate of "practical reason"; but, as I have tried to show in my book, *Ethical Relativity* (London, 1932), ch. ix., all his dictates of that mysterious faculty are really only expressions of his emotions; and in the present case the puritanic influence is obvious.



traces left of this iniquity. Even the German law, which prescribes that illegitimate children shall have the same rights with regard to their physical, mental, and social development as have the children of married parents, is not applied to their title to inheritance, nor to the amount of support received by their mother.<sup>1</sup> Soviet Russia is the only country in Europe where there is no illegitimacy of birth, all children having exactly the same rights.<sup>2</sup> It certainly seems both absurd and unjust that the legal rights of any citizens should be influenced by the judgments which society passes upon their mothers; but however much legislation may improve the conditions of illegitimate children, it cannot make them equal to those under which most other children develop. Family allowances may be granted to their mothers where the father is unknown or indigent, foundling institutions may provide them with an education that is the best possible in the circumstances, but nothing can compensate them for their lack of an adequate home.<sup>3</sup>

While the law can give the child of an unmarried mother the same rights as it grants the child of a married one, it could, of course, in a monogamic society give the unmarried mother the rights of a married woman, by compelling the father to marry her, only if he had no wife before. Among many savage peoples and among certain strata of the population in civilised countries, custom requires him to do so, and it has been urged by some modern writers that there should be a law to the same effect.<sup>4</sup> It is said that every healthy

<sup>1</sup> Anna Siemsen, 'Die gesellschaftliche Stellung des Kindes und die deutsche Gesetzgebung', in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xvii. (Berlin & Köln, 1930), p. 20.

<sup>2</sup> Fannie W. Halle, *Die Frau in Sowjetrussland* (Berlin, etc., 1932), p. 196; Calverton, *op. cit.* p. 232.

<sup>3</sup> Cf. Wulff, reviewed *loc. cit.* p. 490.

<sup>4</sup> H. Sellheim, *Moderne Gedanken über Geschlechtsbeziehungen* (Leipzig, 1929), reviewed in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xvii. (Berlin & Köln, 1930), p. 73; Ellis, *op. cit.* vi. 488.

woman, married or unmarried, has a right to be proud of her motherhood; that the taking of a husband should not be imposed on her as the price of her right to give birth to a child; that the social stigma attaching to unmarried maternity should be removed.<sup>1</sup> But it cannot be removed by legislation. And as long as this stigma remains, the man who makes an unmarried woman pregnant inflicts an injury upon her, apart from any other evil consequences that may result from her pregnancy.

It may of course be argued that all such evils can be avoided through the use of contraceptives. Dr. Ellis maintains that the much smaller rate of illegitimate children in England, compared with the rate of such children in Germany, is due to the wider adoption of methods for preventing conception;<sup>2</sup> but when we hear that their number is rapidly increasing in Germany, in spite of the fact that contraceptives are used on a large scale among all classes, we can by no means feel reassured that extra-matrimonial procreation will some day become an anachronism. Strictly speaking, however, the censure to which the unmarried mother is subjected refers to something else than the birth of the child: this event is only a conclusive and impressive testimony of an act which itself is considered degrading.

The Christian attitude towards extra-matrimonial connections was fixed by the Church. While looking with suspicion even on the lifelong union of one man with one woman, she pronounced all other forms of sexual intercourse to be mortal sins. But in this, as in many other points of morals, there has always been considerable discrepancy between Christian doctrine and public opinion in Christian countries. The influence of the ascetic doctrine of the Church was in one respect quite contrary to its aspirations: the institution

<sup>1</sup> A. Forel, *Sexuelle Ethik* (München, 1906), p. 22 *sq.*; G. B. Shaw, *Getting Married* (London, 1913), p. 141; Lindsey and Evans, *op. cit.* p. 220.

<sup>2</sup> Ellis, *op. cit.* vi. 489 n. 1.



of clerical celibacy created a large class of people to whom illicit love was the only means of gratifying a natural desire, and this could hardly be favourable to the ideal of chastity. During the Middle Ages incontinence was largely an object of ridicule rather than censure, and in the comic literature of that period the clergy are represented as the great corrupters of domestic virtue. Whether the tenet of chastity laid down by the code of chivalry was taken more seriously may be fairly doubted. For a mediaeval knight the chief object of life was love; he who did not understand how to win a lady was but half a man; and the difference between a lover and a seducer was apparently slight.

The Reformation brought about some change, if in no other respect at least by making marriage lawful for the clergy. In fits of religious enthusiasm even the secular legislators busied themselves with acts of incontinence in which two unmarried adults of different sex were consenting parties. In England, in the days of the Commonwealth, in cases of less serious breach of chastity than adultery and incest, each man or woman was for each offence to be committed to the common gaol for three months; and in Scotland, after the Reformation, fornication was punished with a severity nearly equal to that which attended the infraction of the marriage vow.<sup>1</sup> But the fate of these and similar laws has been either to be repealed or to become invalid. For ordinary acts of incontinence public opinion is, practically at least, the only judge. In the case of female unchastity its sentence is severe enough among the upper ranks of society, while, so far as the lower classes are concerned, it varies considerably even in different parts of the same country, and is in many cases mild or acquitting. As to similar acts committed by unmarried men, the words which Cicero uttered on behalf of Coelius might be repeated by any modern

<sup>1</sup> *The Origin and Development of the Moral Ideas*, ii. 432 sq.

advocate who, in defending his client, ventured to express frankly the popular opinion on the subject. He said: "If there be anyone who thinks that youth is to be wholly interdicted from amours with courtesans, he certainly is very strict indeed. I cannot deny what he says; but still he is at variance not only with the licence of the present age, but even with the habits of our ancestors, and with what they used to consider allowable".<sup>1</sup> It seems to me that with regard to sexual relations between unmarried men and women Christianity has done little more than establish a standard which, though accepted perhaps in theory, is hardly recognised by the feelings of the large majority of people—or at least of men—in Christian countries.

This double standard has found expression even in legislation. In Germany, in the Middle Ages, the protection of the law extended only to respectable women. The crime of rape upon an unmarried woman was possible only if she was a virgin; in the terms of the *Schwabenspiegel*, the mediaeval code of Southern Germany, the light woman is non-suited from any action against a man for carnal violence.<sup>2</sup> And in the Supreme Court of the German Empire it was not long ago laid down that a husband has the right to contest the validity of her marriage if he learns that before the marriage was contracted his wife has had sexual relations with another man and has concealed the fact from his knowledge; whereas the same Court rejected the plea of a woman who contested the validity of her marriage on the ground that her husband had concealed the fact of having previously had a child by another woman.<sup>3</sup>

The double standard has been criticised by modern

<sup>1</sup> Cicero, *Pro Cœlio*, 20 (48).

<sup>2</sup> H. Dorn, *Strafrecht und Sittlichkeit* (München, 1907), p. 21.

<sup>3</sup> R. Michels, *Sexual Ethics* (London & Felling-on-Tyne, 1914), p. 169.



writers, who claim that with regard to pre-marital sexual relations there should be perfect equality between the sexes. This aim might be achieved in two different ways. Some maintain that if it is wrong for a woman to indulge in such relations, it is also wrong for a man to do so; whereas others argue that if a man has the right to be incontinent, a woman should have the same right. Ellen Key writes: "The modern woman's great distress has been the discovery of the dissimilarity between her own erotic nature and that of man; or rather, she has refused and still refuses to make this discovery and thinks that only the custom of society—with its wholesome severity towards her, its reckless leniency towards him—has brought about the difference which exists and which she would abolish. But while one group proposes to do so by demanding feminine chastity of the man, the other would claim masculine freedom for the woman".<sup>1</sup> The earlier feminists belonged largely to the former group; but when they advocated sexual equality between men and women it was, apparently, not in the first place sexual morality that they had at heart. "It became increasingly evident", says Mr. Wells, "that a large part of the woman's suffrage movement was animated less by the desire for freedom and fullness of life, than by a passionate jealousy and hatred of the relative liberties of men. For one woman in the resuscitated movement who wanted to live generously and nobly, a score were desirous merely of making things uncomfortable for the insolent, embarrassing, oblivious male. . . . That feminism had anything to do with sexual health and happiness, was repudiated by these ladies with flushed indignation so soon as the suggestion was made plain to them".<sup>2</sup> Dr. Davis' question whether a young man

<sup>1</sup> Ellen Key, *Love and Marriage* (New York & London, 1911), p. 89 sq.

<sup>2</sup> H. G. Wells, *Experiment in Autobiography*, ii. (London, 1934), p. 483 sq.

before marriage is ever justified in having sex intercourse, was answered in the negative by 806, or 79 per cent., of the women to whom the question was put, and in the affirmative by 213, or 20·9 per cent. Various conditions were suggested by the minority group, such as temptation, the strain and stress of exceptional circumstances, or injury to health; some considered that love was sufficient justification, and others that obstacles to marriage would justify engaged couples. Again, the question whether a young woman before marriage was ever justified in having sex intercourse, was answered in the negative by 772, or 80·5 per cent., of the women, and in the affirmative by 186, or 19·4 per cent., which shows only a slight variation, 1·1 per cent., from the opinions expressed in regard to young men; and those who replied affirmatively offered the same sort of justification for the women as for the men.<sup>1</sup> But most of the women questioned belonged to the pre-war generation.

Bertrand Russell points out that modern feminists are no longer so anxious as the feminists of thirty years ago to curtail the "vices" of men, but ask rather that what is permitted to men shall be permitted also to them. He is himself in sympathy with this view. "It is evident", he says, "that so long as many men for economic reasons find early marriage impossible, while many women cannot marry at all, equality as between men and women demands a relaxation in the traditional standards of feminine virtue. If men are allowed pre-nuptial intercourse (as in fact they are), women must be allowed it also. And, in all countries where there is an excess of women, it is an obvious injustice that those women who by arithmetical necessity must remain unmarried should be wholly debarred from sexual experience. Doubtless the pioneers of the

<sup>1</sup> Katharine B. Davis, *Factors in the Sex Life of Twenty-two Hundred Women* (New York, 1929), p. 349 *sqq.*



women's movement had no such consequences in view, but their modern followers perceive them clearly, and whoever opposes these deductions must face the fact that he or she is not in favour of justice to the female sex".<sup>1</sup> The equality between the sexes as regards the right to sexual relationships outside marriage had been advocated long before, at the time of the French revolution and by socialist writers,<sup>2</sup> and nowadays the cause has many champions both in Europe and America.<sup>3</sup> In Soviet Russia the same liberties in sex as in other human relations are, as a matter of course, granted to men and women. "If a man and woman wish to go off on a trip on the Volga or to the Caucasus for a love-life of their own for a week, a month, a year, any period, it is their affair, and only theirs. The law will not interfere with them; nor will public opinion; nor anybody or anything else. It is as respectable a procedure or indulgence as a honeymoon with one's own spouse".<sup>4</sup>

The double standard of pre-nuptial chastity has been attributed to a variety of causes. It is said to be due chiefly to the opinion that the sexual instinct is stronger in man than in woman.<sup>5</sup> Another alleged cause is that virginity is practically the sole criterion of assured paternity: "the hymen, therefore, is like the seal used by stores to ensure the fact that goods which

<sup>1</sup> B. Russell, *Marriage and Morals* (London, 1929), pp. 69, 72 sq.

<sup>2</sup> E. H. Kisch, *Die sexuelle Untreue der Frau*, ii. (Bonn, 1918), p. 98 sqq.; Michels, *Sittlichkeit in Ziffern?* p. 58 sq. *Infra*, p. 157.

<sup>3</sup> E.g. K. F. Friedlaender, 'Sexualreform und weiblicher Geschlechtstrieb', in A. Weil, *Sexualreform und Sexualwissenschaft* (Stuttgart, 1922), p. 134; Kaibel, *Das Problem der Virginität in der heutigen Wende der Weltanschauung* (Weimar, 1928), reviewed in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xv. (Berlin & Köln, 1929), p. 584 sq.; L. Blum, *Le Mariage* (Paris, 1920); G. Anquetil, *La Maîtresse légitime* (Paris, 1922); S. D. Schmalhausen, *Why We Misbehave* (New York, 1928), p. 14 sq.; Calverton, *op. cit.* p. 94.

<sup>4</sup> M. Hindus, *Humanity Uprooted* (London, etc., 1929), p. 94 sq.

<sup>5</sup> Friedlaender, *loc. cit.* p. 134.

are exposed to sale have not been touched or handled. . . . A great over-valuation of virginity is found only in communities that treat their women as if they were chattels".<sup>1</sup> According to Judge Lindsey, the demand for chastity in women rather than in men has reasons connected with the inheritance of property, and the desire of men to leave their possessions to children of their own begetting.<sup>2</sup> Bloch thinks it is possible that the demand for the virgin intactness of the wife at the time of marriage is based upon the old experience that by sexual intercourse, and still more by the first conception, certain far-reaching specific changes are induced in the feminine organism, so that the first man impregnates the feminine being for ever in his own sense, and even transmits his influence to children of a second male progenitor<sup>3</sup> (a rather fantastic explanation which presupposes that the said "experience" must have been very widespread, also in the savage world). Other suggested explanations are that the demand in question is rooted in man's vanity,<sup>4</sup> or in the humiliation he feels if he has to accept "second-hand goods".<sup>5</sup> Bertrand Russell says "it would seem that it is only with the introduction of the patriarchal system that men came to desire virginity in their brides. Where the matrilineal system exists young women sow their wild oats as freely as young men".<sup>6</sup> This allegation is apparently based (like some other statements made by him with reference to "matrilineal societies") upon the customs of one small matrilineal people, the Trobriand Islanders in Melanesia. According to Dr.

<sup>1</sup> E. Wexberg, *Individual Psychology and Sex* (London, 1931), p. 158.

<sup>2</sup> B. B. Lindsey and Wainwright Evans, *The Companionate Marriage* (London, etc., 1928), p. 283 sq.

<sup>3</sup> I. Bloch, *The Sexual Life of Our Time* (London, 1908), p. 200 sq.

<sup>4</sup> Kaibel, reviewed *loc. cit.* p. 585.

<sup>5</sup> Schmalhausen, *op. cit.* p. 66 sq.

<sup>6</sup> Russell, *op. cit.* p. 27.



Briffault, the demand for virginity in the bride is in the first instance a claim established by the contract of child-marriage, the lack of virginity being a breach of faith and an act of commercial dishonesty.<sup>1</sup> To this theory various objections may be raised, as I have pointed out elsewhere;<sup>2</sup> not the least important among them is that a high standard of pre-nuptial chastity in the bride is reported by competent observers to exist among a large number of savage peoples who are not known to practise infant-betrothal as a rule, and whose marriages are no business transactions.

As to the demand for virginity in the bride among savage peoples, it may be said that among a very large number of them there is no such demand. Yet in looking at the facts a little more closely, we find, first, that in many cases the pre-nuptial freedom is not primitive but due to contact with civilised races; and secondly, that the sexual connections between a boy and a girl are very frequently a preliminary to their marriage, being either a regular method of courtship or a trial before establishing more permanent relations. It also seems that there may have been some misunderstanding as to the actual character of those relations. We often read that a girl is blamed or even severely punished for having a pre-nuptial child, although both sexes enjoy perfect freedom previous to marriage. I find it difficult to believe that at the birth of an illegitimate child, which is said to be a rare event, the condemnation merely refers to the fact that there has been neither contraception (which is not known to be very common among savages) nor abortion; but there may also be another explanation. "It is scarcely credible", says Torday, "that Bantu parents and elders should be devoid of common sense to such an extent as to permit their children to have promiscuous intercourse and yet visit

<sup>1</sup> R. Briffault, *The Mothers*, iii. (London, 1927), p. 334 *sqq.*

<sup>2</sup> *Three Essays on Sex and Marriage* (London, 1934), p. 245 *sqq.*

them with dire penalties when the natural consequence, pregnancy, follows ”; and he thinks we may assume “ that whatever freedom boys and girls take with each other, as a rule actual sexual intercourse does not take place ”.<sup>1</sup> Other authoritative ethnologists have made statements to the same effect with reference to Bantu and Nilotic tribes.<sup>2</sup> Those practices might then be very similar to the night-courting customs which are so common among Teutonic and Celtic peoples and which—as I am told by Dr. K. R. V. Wikman, who has studied them more minutely than anybody else—do not normally imply coitus, unless they have the character of trial unions calculated to testify the woman’s capacity for bearing children. In any case, however commonly pre-nuptial chastity be disregarded in the savage world, we must not suppose that such disregard is anything like a general characteristic of the lower races. The statistical investigation into such chastity among the “ simpler peoples ”, which has been made with much industry and care by Messrs. Hobhouse, Wheeler, and Ginsberg, has led them to the conclusion that among the cases examined by them—about 120 in number, probable ones reckoned as a half—those in which pre-nuptial relations are condemned are nearly as numerous as those in which they are condoned; and my own collection of facts convinces me that the savage standard of pre-nuptial continence has not been overestimated by those authors. It is obvious that it is not proportionate to the tribe’s degree of culture. Generally speaking, the lower hunters have a stricter standard than the higher ones, and the lowest agricultural stage comes out materially better than the two higher stages; while the

<sup>1</sup> E. Torday, ‘ The Principles of Bantu Marriage ’, in *Africa*, ii. (London, 1929), p. 256.

<sup>2</sup> C. Dundas, ‘ Native Laws of some Bantu Tribes of East Africa ’, in *The Journal of the Royal Anthropological Institute*, li. (London, 1921), p. 247; J. H. Driberg, *The Lango* (London, 1923), p. 155 n. 2.



higher agricultural tribes stand considerably below the pastoral ones.<sup>1</sup>

The social condemnation of pre-nuptial unchastity in women is obviously due to the preference which a man gives to a virgin bride. Such preference is a fact of very general occurrence both among uncivilised and civilised peoples, although there are exceptions to the rule. Desire for offspring may induce a savage to marry a young woman who has borne a child, or a virgin bride may be avoided because "she who has not been known to others can have nothing pleasing about her", or because a wife "is nothing worth unless she has been used to consort with men".<sup>2</sup> The preference given to virgin brides springs, no doubt, partly from a feeling akin to jealousy of women who have had previous connections with other men, but also largely from an instinctive appreciation of female coyness. Each sex is attracted by the distinctive characteristics of the opposite sex, and coyness is a feminine quality. In mankind, as among the lower animals, the female requires to be courted, often endeavouring for a long time to escape from the male. And it is certainly not the woman who yields most readily to the desires of a man that is most attractive to him; as an ancient writer puts it, all men love seasoned dishes, not plain meats, or plainly dressed fish, and it is modesty that gives the bloom to beauty.<sup>3</sup> Conspicuous eagerness in a woman appears to a man unwomanly, repulsive, contemptible; his ideal is the virgin, the lustful woman he despises. Where marriage is the customary form of sexual relations, pre-nuptial incontinence in a woman, as suggesting lack of coyness and modesty, is therefore more or less apt to disgrace her. At the same time it is a disgrace to, and

<sup>1</sup> E. Westermarck, *The History of Human Marriage*, i. (London, 1921), p. 126 *sqq.*; *Three Essays on Sex and Marriage*, p. 223 *sqq.*

<sup>2</sup> *The History of Human Marriage*, i. 160 *sqq.*

<sup>3</sup> Athenaeus, *Deipnosophistæ*, xiii. 16.

consequently an offence against, her family, especially where the ties of kinship are strong. Moreover, where wives are purchased the unchaste girl, by lowering her market value, deprives her father or parents of part of their property. This commercial point of view is found not only among savage peoples, but is expressed in the Mosaic rule: "If a man entice a maid that is not betrothed, and lie with her, he shall surely endow her to be his wife. If her father utterly refuse to give her unto him, he shall pay money according to the dowry of virgins".<sup>1</sup> The girl, however, is not the only offender: the offence against her family is divided between her and the seducer, who is regarded in the light of a robber spoiling their merchandise. Marriage by purchase has thus raised the standard of female chastity, and also, to some extent, checked the incontinence of the men. But in numerous instances where a seduction is followed by more or less serious consequences for the seducer, the penalty he has to pay is evidently something else than the mere market value of the girl.

With the increasing independence of daughters a seduction has, more or less, ceased to be looked upon as an offence against the family. It has never been seriously looked upon as an offence against the girl. Even in the case of rape the harm done to her is among many savages not considered at all; nay, the Teutons in early days hardly severed rape from abduction, the kinsmen of the woman feeling themselves equally wronged in either case.<sup>2</sup> Among ourselves the seducer generally goes scot-free, while all dishonour falls on the woman. He therefore incurs a responsibility which is not lessened by being generally ignored. Her error may be cancelled by marriage with her partner; but the partnership may also be terminated at any moment, to the detriment of the woman. As Moll observes, "a

<sup>1</sup> *Exodus*, xxii. 16 sq.

<sup>2</sup> *The Origin and Development of the Moral Ideas*, ii. 437 sq.



prostitute knows that she is an object of pleasure for a definite time, a woman who associates herself with a man in free love is always the injured party when they separate".<sup>1</sup> "If absolute freedom to love reigned", says Gina Lombroso, "all women would be unhappy".<sup>2</sup> Grete Meisel-Hess writes: "Panegyrics of the free sexual union are based upon a profound ignorance of the masculine nature. Man is ill-adapted for the free intimacy. . . . In marriage the man does not give free rein to his inclinations . . . whereas he cannot leave his 'beloved' quickly enough when his passion cools".<sup>3</sup> The intensity of his love may be measured with more certainty after than before possession; indeed, there are men who lose all interest in a woman directly they have possessed her. Rousseau exclaims: "Light-loving woman, do you wish to know whether you are loved? Study your lover as he leaves your arms".<sup>4</sup>

The girl who loses her virginity easily loses her chance of marriage. And what is worse: her loss of virginity is a frequent cause of prostitution.<sup>5</sup> "The first coitus", says Marro, "exercises a singular influence upon the morals of the woman"; a prostitute said to him, "When a door has once been broken in it is difficult to keep it closed".<sup>6</sup> The Greek orator expressed a well-known fact in his remark that the moment a woman loses her chastity her mind is changed.<sup>7</sup> "To the man", said Madame de Staël, "love is an episode in his life, to a woman it is life itself". When a woman was reproached by a French magistrate for living with

<sup>1</sup> Moll, *op. cit.* p. 396.

<sup>2</sup> Gina Lombroso, *The Soul of Woman* (London, 1924), p. 229.

<sup>3</sup> Grete Meisel-Hess, *The Sexual Crisis* (New York, 1917), p. 52 sq.

<sup>4</sup> Rousseau, *La Nouvelle Héloïse*, i. 55.

<sup>5</sup> Moll, *op. cit.* p. 397; Ellis, *op. cit.* vi. 292; Forel, *op. cit.* p. 22; A. Marro, *La Pubertà* (Torino, 1900), p. 496.

<sup>6</sup> Marro, *op. cit.* p. 496.

<sup>7</sup> Lysias, quoted by L. Schmidt, *Die Ethik der alten Griechen*, i. (Berlin, 1882), p. 273.

a thief, she exclaimed, " But when I am not in love I am nothing ".<sup>1</sup>

There are other peculiarities of the sexual impulse in woman that deserve notice in the present connection. Opinions differ widely as to its average intensity. In the East women are said to be conspicuous for their sensuality; according to the sacred literature of the Hindus their sexual desires can as little be satisfied or fed full as a devouring fire can be fed full of combustible materials, or as the ocean can be overfilled by the rivers that pour their waters into it.<sup>2</sup> In all Greek love-stories of early date " the woman falls in love with the man, never, apparently, the reverse "; and " the Euripidean woman who ' falls in love ' thinks first of all, ' How can I seduce the man I love? ' " <sup>3</sup> Christian asceticism, as is well known, regarded woman as the symbol of sex. But since the last century it is a very prevalent opinion among sexologists that the sexual impulse is not so strongly developed in women as in men;<sup>4</sup> this, for instance, is the view of such authorities as Krafft-Ebing,<sup>5</sup> Moll,<sup>6</sup> O. Adler,<sup>7</sup> and Loewenfeld.<sup>8</sup> But others

<sup>1</sup> Ellis, *op. cit.* ' Analysis of the Sexual Impulse, etc. ' (Philadelphia, 1903), p. 199.

<sup>2</sup> E. H. Kisch, *The Sexual Life of Woman* (London, s.d.), p. 171.

<sup>3</sup> E. F. M. Benecke, *Antimachus of Colophon and the Position of Women in Greek Poetry* (London, 1896), pp. 34, 54.

<sup>4</sup> See writers quoted by Kisch, *The Sexual Life of Woman*, p. 171; by Ellis, *op. cit.* ' Analysis of the Sexual Impulse ', p. 157 sq.; and by K. F. Friedlaender, *Die Impotenz des Weibes* (Leipzig, 1921), p. 9; and besides, W. J. Robinson, *Sexual Problems of To-day* (New York, 1922), p. 66 sq.; *idem*, *Woman Her Sex and Love Life* (New York, 1923), p. 319 sq.; E. F. Stephenson, quoted by Pirkner, ' New Yorker Brief im Februar, 1928 ', in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xv. (Berlin & Köln, 1929), p. 62.

<sup>5</sup> R. v. Krafft-Ebing, *Psychopathia Sexualis* (Stuttgart, 1903), p. 13.

<sup>6</sup> Moll, *op. cit.* p. 446.

<sup>7</sup> O. Adler, *Die mangelhafte Geschlechtsempfindung des Weibes* (Berlin, 1911), p. 125 sqq.

<sup>8</sup> L. Loewenfeld, *On Conjugal Happiness* (London, 1912), p. 168 sq.



maintain that the normal woman has as vigorous a sex appetite as the normal man, if not more so.<sup>1</sup> General comparisons relating to intensity, however, are difficult, because the sexual impulse shows greater variations in women—both in the same woman on different occasions and in different women—than in men. Among the latter it is very rarely altogether absent, whereas quite a large number of women possess so-called *naturæ frigidaë*, and have no sensual inclination to sexual intercourse, to which they are either indifferent or in some cases strongly averse, even regarding it with horror; and their frigidity may persist also after their introduction to it. In a still greater proportion of women the sexual impulse never exceeds a certain minimal intensity. But in contrast with these women of frigid temperament there are others whose sexual passions may be so powerful that no man can satisfy their needs.<sup>2</sup>

While love occupies a much larger place in a woman's mind than in a man's, the purely sensual element is normally less marked than the spiritual side.<sup>3</sup> The sexual impulse is often satisfied by the sensations of touch from mutual contact of portions of the body, by the writing and receiving of affectionate letters, by the

<sup>1</sup> Bloch, *op. cit.* p. 83 sq.; C. G. Beale, *Wise Wedlock* (London, [1922]), p. 51; Norman Haire, *Hymen or the Future of Marriage* (London, 1928), p. 41; Johanna Elberskirchen, quoted by Adler, *op. cit.* p. 133; H. Rohleder, *Die libidinösen Funktionsstörungen der Zeugung beim Weibe* (Leipzig, 1914), p. 13; Friedlaender, *op. cit.* p. 13. See also writers quoted *ibid.* p. 6; and by Ellis, *op. cit.* 'Analysis of the Sexual Impulse', p. 160 sqq. Ellis himself (*ibid.* p. 203) thinks "we may fairly hold that roughly speaking, the distribution of the sexual impulse between the two sexes is fairly balanced".

<sup>2</sup> *Ibid.* p. 162 sqq.; Kisch, *The Sexual Life of Woman*, p. 172 sqq.; Adler, *op. cit. passim*; A. Forel, *Die Sexuelle Frage* (München, 1931), p. 125.

<sup>3</sup> Cf. W. Liepmann, *Psychologie der Frau* (Berlin & Wien, 1920), pp. 160, 165, 166, 171 sq.; Forel, *Die Sexuelle Frage*, p. 121; Loewenfeld, *op. cit.* p. 168 sq.

play of imagination and illusion, and may even find more satisfaction in mere caresses than in actual coitus. The desire for the latter tends to awaken considerably later in women than in men, as long as they remain free from all experience of sexual stimulation. A woman's love is mingled with devotion and respect. She desires to gratify the man she loves; she may forego sensual enjoyments rather than the satisfaction of her ideal love; she may even consider sexual intercourse important not so much because it gives her pleasure as because she sees in it the expression of the affection which her husband has for her. I shall quote some statements made by female writers as to the differences between men's love and that of their own sex.

Ellen Key writes: "Women never take sufficient account of sensuousness, nor men of spirituality. . . . It is no doubt true that woman also wishes to be made happy by man through her senses. But while this longing in her not unfrequently awakes long after she already loves a man so that she could give her life for him, with man the desire to possess a woman often awakes before he even loves her enough to give his little finger for her. That with women love usually proceeds from the soul to the senses and sometimes does not reach so far; that with men it usually proceeds from the senses to the soul and sometimes never completes the journey—this is for both the most painful of the existing distinctions between man and woman".<sup>1</sup> Hedwig Wega says that while a man can take a fancy to a woman for whom he entertains mere sensual feelings, a woman with normal emotions cannot give herself up to a man unless she respects him.<sup>2</sup> Gina Lombroso gives the following analysis of the love of man and

<sup>1</sup> Ellen Key, *op. cit.* p. 97 *sqq.*

<sup>2</sup> Hedwig Wega, 'Über Ehe, freie Liebe und Freundschaft zwischen Mann und Weib', in *Zeitschrift für Sexualwissenschaft*, vi. (Bonn, 1919-1920), p. 67.



woman: "For man, love is an essentially selfish, sensual and passionate attraction, to which is added the pleasure of conquest and the pride of ownership". For woman, "love is the attraction she feels for some one whom she esteems above herself, with whom and for whom she may exercise her activity and her altruism. For her, love gives the opportunity to care for and minister to him who has chosen her. Consequently, her ardour will be in close relation to the esteem and admiration that she has for the man she loves, for this esteem will render the choice of which she has been the object all the more flattering. A woman cannot love a person whom she does not esteem. . . . The fact that in woman love is intimately allied to esteem and admiration explains why the highest aspiration of feminine love is for the moral and intellectual sympathy to which man is almost indifferent".<sup>1</sup> Of the female students at the University of Moscow who answered questionnaires submitted to them a few years before the war, 279 declared that they esteemed a man chiefly for his mental qualities, and only 60 that they did so for his physical ones; and a still smaller number attributed to sexual intercourse the dominant rôle in love.<sup>2</sup> Among 1267 male and female students belonging to various institutions in Kharkov in 1926, who lived in durable sex relations, 23·4 per cent. of the men and only 1·9 per cent. of the women valued the physical qualities of their partners more highly than the psychological ones.<sup>3</sup>

In the present connection it is of particular importance to notice that in a very large number of young women there is no direct desire for coitus until such a

<sup>1</sup> Gina Lombroso, *op. cit.* pp. 195, 199 *sq.*

<sup>2</sup> S. Weissenberg, 'Das Geschlechtsleben der russischen Studentinnen', in *Zeitschrift für Sexualwissenschaft*, xi. (Bonn, 1924), p. 11.

<sup>3</sup> Z. A. Gurewitsch and F. J. Grosser, 'Das Geschlechtsleben der Gegenwart', *ibid.* xv. (Berlin & Köln, 1929), p. 545 *sq.*

desire is aroused by a man.<sup>1</sup> But when once aroused it is impossible to foresee the limit it will reach. These are facts that greatly increase the responsibility for seducing a virgin and abandoning her.

It will perhaps be argued that if pre-nuptial freedom were granted to girls by public opinion, the chief dangers now attending it would disappear, and that the wheel of evolution actually moves in that direction. After all, it is said, the insistence upon the intact virginity of the wife is a demand made by an epicure who finds in the virgin an especially piquant morsel. "Among the working classes and the greater part of the men of our agricultural population", says Loewenfeld, "virginity is hardly expected in their mate. The knowledge that the loved one or the fiancée has already had intimate relations with another man does not reduce her value to any extent; and even the presence of a child the wife brings with her on marriage very often does not affect unfavourably the character of the marital life if the husband happen to be a good-natured sort of fellow. In the socially higher classes and the cultured strata, on the other hand, the men are still completely dominated by the dogma of the sexual honour of the woman, although this dogma leads in part to consequences that could not be admitted before the forum of a higher and purer ethical standard".<sup>2</sup> But among the upper classes, also, many men have no objection to marrying divorced women or widows. Does not this prove that their demand of bridal virginity in other cases is

<sup>1</sup> Ellis, *op. cit.* 'Analysis of the Sexual Impulse', pp. 190, 203; Kisch, *Die sexuelle Untreue der Frau*, i. 76; Erb, quoted by Kisch, *The Sexual Life of Woman*, p. 172 sq.; Adler, *op. cit.* pp. 128, 181; H. Keyserling, *The Book of Marriage* (New York, 1926), p. 39; Liepmann, *op. cit.* pp. 161, 172, 174; Forel, *Die Sexuelle Frage*, p. 120 sq.; Hedwig Wega, in *Zeitschrift für Sexualwissenschaft*, vi. 64. Adler (*op. cit.* p. 129) and Kisch (*Die sexuelle Untreue der Frau*, i. 82) observe that nightly pollutions do not occur in "pure" virgins.

<sup>2</sup> Loewenfeld, *op. cit.* p. 141.



due to convention rather than to genuine feeling?

Arguments like these fail to take notice of two important facts. One is the close association which exists in a refined mind between the sensual and the spiritual elements in sexual love, and the other fact is the particular prominence that distinguishes the spiritual element in feminine love of a higher type. Widows and divorced wives are not on a par with girls who sow their wild oats, which the advocates of "the new morality" admit them to do; the demand of virginity in a bride may be abandoned by a cultured man, when the lack of it is not inconsistent with that refinement of love which he expects in a woman who is to become his wife. He may himself indulge in the coarser forms of love, and at the same time despise a woman who does so. Professor Blonsky, in speaking of women in Moscow who form numerous relationships with men, either successively or simultaneously, points out that intelligent men who have intercourse with such women as a convenient means of gratifying their sexual needs hold them in contempt and treat them with great brutality.<sup>1</sup> It is argued that the tendency to rationalisation in the new morality will lead to a devaluation of virginity in the judgment of the man and in the life of the woman;<sup>2</sup> but I believe that the double standard of pre-nuptial freedom, though it may be modified by reasoning and even lose its character of a moral question, is too deeply rooted in man's emotional appreciation of virgin chastity, to allow the problem to be solved in a purely intellectual fashion. At the same time the union of a man and a woman who, tied together by

<sup>1</sup> P. Petrowitsch Blonsky, 'Zur Psychologie der monandrischen und der polyandrischen Frau in der modernen Kultur', in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xvii. (Berlin & Köln, 1930), p. 10 sq.

<sup>2</sup> H. Sellheim, 'Was muss der Arzt von der Regulierung der Fortpflanzung wissen?' *ibid.* xviii. (1931), p. 347.

genuine love implying mutual affection, decide to live together as husband and wife though not joined in legal wedlock, is not equivalent to other, coarser, kinds of sexual relationships; and I believe that the time may not be far off when the only objection which public opinion perhaps has to raise to such a union is that the official registration of it may be of some social importance.

But even if public opinion would, in the future, grant complete sexual freedom to the unmarried of either sex, the indulgence in it by girls would still be attendant with serious disadvantages, already pointed out. There would undoubtedly be exploitation of women by men: girls who remained virgins would still be preferred as wives, and the others would run the risk of being used only for temporary purposes. Feminists advocating equal freedom for men and women seem to overlook the benefits that the *men* would derive from it: they would find it far easier to gratify their desires in a more agreeable manner than through intercourse with prostitutes, and at the same time to acquire sexual experience considered useful for their future marriage. When speaking of "the injustice" of different moral demands on man and woman, those advocates also fail to notice that this difference is ultimately due to a difference in the sexual instincts of the two sexes.

A female writer asserts that every woman, as well as every man, wishes to possess the other party not only solely, but also as the first, although only the man could enforce his wish.<sup>1</sup> This is certainly not correct. Women who demand purity in men do not do so on account of an instinct inherent in their sex. Dr. Ellis observes that women are not attracted to virginal innocence in men, and that they frequently have good

<sup>1</sup> Leonie Ungern-Sternberg, 'The Marriage of the Future', in Keyserling, *op. cit.* p. 268.



ground for viewing such innocence with suspicion.<sup>1</sup> According to Freud, they divine that complete abstinence during youth often enough is not the best preparation for marriage in a young man, and “prefer those of their wooers who have already proved themselves to be men with other women”.<sup>2</sup> Sofie Lazarsfeld thinks they are usually only afraid that the man may renew some old affair.<sup>3</sup> Michels says that while there is a category of girls who give no thought at all to the sexual past of their future husbands, and a very small minority who wish it to have been on the same plane as their own, “at the present day, the majority of girls entering upon marriage regard previous sexual experience on the part of their husbands as a necessity, as a matter beyond discussion”.<sup>4</sup> Juan Valera writes in his novel *Doña Luz*: “It pleases a woman and increases her affection for him to know that her husband has had some former love affair. And this is no matter how modest or how jealously inclined she may be. The qualities that do most honour to a woman are modesty and decorum, those that do most honour to a man, intelligence and courage. Hence it results that even the most pious and modest young girl far from being displeased with her future husband if she chances to discover that he has been ‘fortunate’ with the fair sex, will love him for this more exclusively and passionately than ever. She sees in this ‘good fortune’ a proof of the merit of the man who has been thus favoured by other women; the value of his affection for herself is thereby enhanced, since he has preferred her to so many others whose affection he might have

<sup>1</sup> Ellis, *op. cit.* vi. 413.

<sup>2</sup> S. Freud, ‘Die “kulturelle” Sexualmoral und die moderne Perversität’, in *Gesammelte Schriften*, v. (Leipzig, Wien, Zürich, 1924), p. 160.

<sup>3</sup> Sofie Lazarsfeld, *Rhythm of Life* (London, 1934), p. 262.

<sup>4</sup> Michels, *Sexual Ethics*, p. 141 *sqq.*

won or has won; and it almost seems as if there was conferred upon her a high moral mission, flattering alike to her vanity and her piety, namely, to render her lover—by virtue of her superior and purer attractions—constant to one object, and to convert him from a gay gallant, dangerous to the peace of her sex, into an inoffensive, tranquil, and sensible head of a family. . . . To have been fortunate in love is and always has been one of the most powerful means at a man's disposal of winning the love of other women. And this from the heroic and primitive age down to our own times". Something of this took place in the heart of Doña Luz, who knew that Don Jaime had been adored in Madrid, and seeing him now so enamoured, so devoted, so humble, her heart swelled with pride and joy at the conviction that she was loved a thousand times more dearly than any of her former rivals had been.<sup>1</sup>

To sum up the gist of this lengthy discussion: however desirable it may be for a man to receive sex experience from a woman belonging to his own class as a prelude to his marriage, the acquisition of it is attended with such risks for the woman that he must consider whether he has a right to utilise her as a means of preparing him for his marriage—with another woman.

<sup>1</sup> J. Valera, *Doña Luz* (New York, 1891), p. 218 *sqq.*



## CHAPTER VIII

### THE PREDICTED DISAPPEARANCE OF MARRIAGE

IN the preceding chapters I have endeavoured to show that the unhappiness which nowadays so frequently embitters married life may be to some extent relieved. Yet there will always remain a sufficient amount of it to justify the question whether marriage is likely to survive indefinitely.

The divorce-rate, which is the most convincing evidence of the quantity of unhappiness found among the married, is looked upon as an alarming omen. Among the countries of Western civilisation it is highest in the United States, with the probable exception of European Russia; in the former country the ratio of divorces to marriages is one to six,<sup>1</sup> while in the latter it was, in 1926, 1·6 to ten, unregistered marriages and divorces not included.<sup>2</sup> In recent years there has been an increase in the proportion of marriages that terminate in divorce, both in the United States and in Europe, where the divorce-rate is considerably lower.<sup>3</sup> It is

<sup>1</sup> J. P. Lichtenberger, *Divorce: A Social Interpretation* (New York & London, 1931), p. 422.

<sup>2</sup> M. Hindus, *Humanity Uprooted* (London, etc., 1929), p. 144.

<sup>3</sup> *Annuaire international de statistique publié par l'office permanent de l'Institut international de statistique* (La Haye), 1920, iv. 'Mouvement de la population (Amérique)', p. 21 *sq.*; *ibid.* 1917, ii. 'Mouvement de la population (Europe)', p. 30 *sq.*; R. Michels, *Sittlichkeit in Ziffern?* (München & Leipzig, 1928), pp. 118, 119, 122 *sq.* In the United States the divorce-rate has multiplied fivefold from the period just following the Civil War to the present day, and its increase has been comparatively uniform for over six decades (A.

of course quite possible that it will go on increasing in the future; but we are not forced to the conclusion that its present trend is destined to continue indefinitely. American students of the subject point out that the period of the rapid rise of the divorce-rate has been one of correspondingly rapid social changes, during which the institution of marriage has been undergoing a transition;<sup>1</sup> among these is the economic emancipation of women, which is held to be largely responsible for the fact that at present as many as 71 per cent. of all divorces are granted on demand of the wife.<sup>2</sup> "Many old restraints", says Professor Lichtenberger, "have been and are still being removed and new ideals are in the process of formation. Before these vanishing restraints have been replaced by internal regulative controls some disintegration is sure to occur, but in the end, a new adjustment will tend to be established and marriages should be much improved by the change".<sup>3</sup>

At all events, increasing divorce-rates do not spell ruin to marriage. Far from being its enemy, divorce is rather its saviour. However painful it may be, it is after all the remedy for a misfortune, and a means of preserving the dignity of marriage by putting an end to unions that are a disgrace to its name. Sometimes it corrects mistakes made by persons who ought never to have married at all; but more often the mistake consisted in an unfortunate choice of partner, and a second marriage may then lead to a satisfaction and happiness such as the first one lacked. In England almost 60 per cent. of divorcees remarry,<sup>4</sup> in the United States, according

Cahen, *Statistical Analysis of American Divorce* [New York, 1932], p. 138).

<sup>1</sup> Cahen, *op. cit.* pp. 128, 142; J. K. Folsom, *The Family* (New York & London, 1934), p. 376.

<sup>2</sup> Cahen, *op. cit.* p. 60.

<sup>3</sup> Lichtenberger, *op. cit.* p. 426 *sqq.*

<sup>4</sup> D. V. Glass, 'Divorce in England and Wales', in *The Sociological Review*, xxvi. (London, 1934), p. 306 n. 1.



to a rough estimate, about 50 per cent.<sup>1</sup> Most of those persons, belonging to the group studied by Dickinson and Beam, who bitterly complained of marital unhappiness, wished to remarry.<sup>2</sup> We know that many divorce suits are initiated purely because one or both of the partners wish to marry someone else; and in all cases may we assume that those who remarry have not lost their faith in marriage, but hope for better luck next time.

While the divorce-rate has increased, the marriage-rate has, in recent times, decreased and the age at which people marry has risen in various European countries. In England and Wales the annual number of marriages per 10,000 marriageable persons was, in 1876-1885, 568; in 1886-1895, 529; in 1896-1905, 531; in 1907-1914, 507. The average age of bachelor-bridegrooms and of spinster-brides was, in 1876-1885, 25.9 and 24.4 respectively; in 1886-1895, 26.4 and 24.9; in 1896-1905, 26.8 and 25.3; in 1906-1910, 27.2 and 25.6.<sup>3</sup> Since the war, though the fall of births continues, the trend of marriage looks like being upwards, but this trend is not marked and may be due to changes of age constitution. In the war and just after, the age of marriage went up and down erratically; but from 1922 onwards it has been falling steadily for men and falling also, though less markedly, for women. To-day, in England, both men and women are marrying earlier than they did just before the war; but whether this lower age of marriage is a consequence of the war or would have come in any case requires, as Sir William Beveridge says, further inquiry.<sup>4</sup> In the United States

<sup>1</sup> Folsom, *op. cit.* p. 381.

<sup>2</sup> R. L. Dickinson and L. Beam, *A Thousand Marriages* (London, 1932), p. 388.

<sup>3</sup> E. Westermarck, *The History of Human Marriage*, i. (London, 1921), p. 389 *sq.*

<sup>4</sup> W. Beveridge and Others, *Changes in Family Life* (London, 1932), pp. 46, 33 *sq.*

the trend of marriage differs from that in various European countries. Statistics show a steady increase of the number of marriages in proportion to the population at every census decade since 1890, and at the same time the age of marriage has become lower. The percentages of married men and women of the population fifteen years of age or over were, in 1890, 53·9 and 56·8 respectively; in 1900, 54·5 and 57·0; in 1910, 55·8 and 58·9; in 1920, 59·2 and 60·6;<sup>1</sup> in 1930, 60·0 and 61·1.<sup>2</sup> What the future may reveal is of course problematic; but certain facts are suggestive. A very important cause of the decline of the marriage-rate and the rise of the age of marriage in Europe has been the difficulty of supporting a family in modern society; the spread of the knowledge of contraceptives should therefore have a tendency to increase the former and to reduce the latter. The divorce laws of Christian countries are also, presumably, responsible for the celibacy of a certain number of people; we may suppose that if marriage could be more easily dissolved it would be more readily entered into. And I think there is every reason to believe that the liberalisation of the grounds of divorce which already has taken place in some countries will gradually spread to all; and that in consequence divorce may become much less expensive than it is now.<sup>3</sup>

While the knowledge of contraceptives may increase the marriage-rate, it also facilitates extra-matrimonial intercourse, the great frequency of which in our days is regarded as another indication of the doom of marriage. Mr. Calverton says that the bankruptcy of marriage in Germany is attested by the growth of illegitimacy in both city and province, one out of every twelve babies,

<sup>1</sup> H. Fehlinger, 'Amerikanische Ehestandsstatistik', in *Zeitschrift für Sexualwissenschaft*, xii. (Bonn, 1926), p. 382.

<sup>2</sup> Lichtenberger, *op. cit.* p. 424.

<sup>3</sup> See *infra*, Ch. X.



that is, 8·6 per cent., being born outside marriage.<sup>1</sup> It is interesting to compare with this the prevalence of illegitimacy in England in the reign of Edward III, when at least 9 per cent. of the villeins of one manor were known to be bastards—which was not an exception to the situation at most English manors but an indication of it—and bastardy was common among the nobles and gentry also.<sup>2</sup> In spite of this, marriage still survives in England, after so many centuries. It is said that marriage is rapidly coming to lose sexual significance for women as well as men, because the sexual impulse can be satisfied outside of it and without many of the impediments which the marital life enforces upon husband and wife; that marriage has become more and more meaningless, and has continued only as a form or fiction, “as a genuflection to convention, and a convenience to escape social embarrassments and stigmas”.<sup>3</sup> But the “meaning” of marriage embraces much more than the gratification of the sexual impulse; and purely sexual relations can never serve as substitutes for those more comprehensive relations between men and women which, under the name of marriage, constitute a social institution of great importance. The former will, of course, always exist side by side with marriage, but cannot replace it.

In my theory of the origin of marriage I have expressed the view that, like the sexual impulse, the other essential elements in marriage have a deep foundation in human and even pre-human instincts. Combined with that impulse, there must from the beginning have been some degree of attachment which kept the individuals of different sex together till after the birth of the offspring. This was the germ of that unity and

<sup>1</sup> V. F. Calverton, *The Bankruptcy of Marriage* (London, 1931), p. 193.

<sup>2</sup> G. May, *Social Control of Sex Expression* (London, 1930), p. 109.

<sup>3</sup> Calverton, *op. cit.* p. 121 sq.

intermingling of the spiritual and the sensual elements in sexual love which characterises the normal relations between husband and wife among ourselves. It has led to a more or less durable community of life in a common home, to which the promiscuous gratification of the sexual impulse affords no equivalent. The suggestion has been made that the home as we now know it may cease to exist and be replaced by "a group of persons consisting of a small number of adults and a somewhat larger but still small number of children living together in permanent association, the adults presiding over the upbringing of the children, but not being necessarily connected with these by ties of blood".<sup>1</sup> According to Dr. Borgius, sexual relationships and common housekeeping have been jumbled together, because marriage is a late survival of the ancient clan system, but this is a most unsuitable arrangement, since there are innumerable wives who have no talents for housewifery. The household of the future will be an association of friends, male and female of different ages, whose sexual relations, inside or outside the household, will concern nobody else; and the children will remain with their mothers until they find it more attractive to go and stay with their school- and playfellows.<sup>2</sup> Schemes of this sort would certainly remove the solitariness of a single life only brightened by fugitive sex relations; but why should an association of several men and women be more harmonious than the union of one man and one woman? There would be no individual sexual rights and duties in that association, and jealousy would of course be strictly interdicted. But what reason is there to think that the torturers and the martyrs in marriage would suddenly become transformed into saints?

<sup>1</sup> Eden Paul, *Chronos or the Future of the Family* (London, 1930), p. 47.

<sup>2</sup> W. Borgius, 'Ehereform?' in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xv. (Berlin & Köln, 1928), pp. 387, 392, 402.



The chief attacks on marriage have been concerned with it as an institution for procreation and the rearing of children. It has been argued that as such it is not needful and even positively harmful. Those attacks were initiated by Plato, who suggested that wives and children should be in common, and no parent should know his own child nor any child his parent. The offspring of worthy persons should be carried by the proper officers to certain nurses dwelling in a separate quarter of the city, whereas the offspring of the more depraved and such children as were deformed should be put away in some mysterious, unknown place.<sup>1</sup> Plato's notion on the community of wives and children was severely handled by Aristotle, who argued that community of wives is attended with many difficulties, and that the tie of friendship, which more than anything else prevents seditions, must be extremely weak in a city where no father can say "this is my son", and no son "this is my father".<sup>2</sup>

Plato's suggestions relating to wives and children were closely connected with his wish to abolish private property as a measure conducive to civil concord and national prosperity. Similar tendencies are found among modern socialists, such as Fourier and Enfantin, even when they do not mean by free love indiscriminate love, nor by collective responsibility for the family having wives in common or taking children away from their parents. More recently, however, the socialists, who at one time were singing paeans in favour of free love, have taken up a more conciliatory attitude towards marriage, chiefly insisting on easier divorce and a reorganisation of the family.<sup>3</sup> Mr. Wells writes in his *Autobiography*: "Socialism, if it is anything more than

<sup>1</sup> Plato, *Respublica*, v. 457, 460 *sqq.* Cf. *idem*, *Leges*, v. 739.

<sup>2</sup> Aristotle, *Politica*, ii. 1261 a, 1262 b.

<sup>3</sup> K. Diehl, *Über Sozialismus, Kommunismus und Anarchismus* (Jena, 1920), p. 162 *sqq.*; R. Michels, *Sexual Ethics* (London & Felling-on-Tyne, 1914), p. 190 *sqq.*

a petty tinkering with economic relationships, is a re-nucleation of society. The family can remain only as a biological fact. Its economic and educational autonomy are inevitably doomed. The modern state is bound to be the ultimate guardian of all children and it must assist, replace, or subordinate the parent as supporter, guardian and educator; it must release all human beings from the obligation of mutual proprietorship, and it must refuse absolutely to recognise or enforce any kind of sexual ownership".<sup>1</sup>

The status of children in the family has changed profoundly in the course of evolution. The father's power over his children reached its height in the countries of archaic civilisation, but has in Europe gradually yielded to a system under which he has been divested of the most essential rights he formerly possessed over them—a system the inmost drift of which is expressed in the words of the French Encyclopedist, "Le pouvoir paternel est plutôt un devoir qu'un pouvoir", and which in recent times has led to a continually increasing interference of the State on behalf of the child. He is protected from economic exploitation and ill-treatment at the hands of his parents. If necessitous he is fed. His health is cared for. He has to be given a minimum of education. There is every reason to believe that the State will assume such care of children in an increasing measure, and that the relations of parents to children will be watched and controlled by it much more strictly than they are at present. But this does not imply that the time will come when, as has been suggested,<sup>2</sup> children are cared for altogether, educated, and supported by the State, from funds provided by the taxation of all

<sup>1</sup> H. G. Wells, *Experiment in Autobiography*, ii. (London, 1934), p. 481.

<sup>2</sup> Norman Haire, *Hymen or the Future of Marriage* (London, 1928), p. 62; R. De Pomerai, *Marriage Past Present and Future* (London, 1930), pp. 312, 305.



citizens, the State thus assuming nearly all the functions of parenthood. I cannot believe that such an arrangement would benefit either the child or the State, or satisfy the normal father and mother.

Others are of a different opinion. "One sometimes wonders", says Dr. Norman Haire, "whether the average parents are not the least fit persons in the world to bring up their own child".<sup>1</sup> According to Judge Lindsey, even among people of good stock, "homes in which children can find the right spiritual and intellectual atmosphere are the exception rather than the rule".<sup>2</sup> Mr. De Pomerai remarks that this truth applies to England as well as to America: "We have to realise the fact . . . that scarcely one parent in a thousand is really capable of efficiently rearing and training a child, and that the average child is happier and far better off in a nursery school or properly organised educational institution than it is in its own home. . . . If private homes have been responsible for a gigantic crop of physical defects, they have been responsible for an even greater harvest of warped personalities, suppressed abilities, and unnecessary antagonisms".<sup>3</sup>

In direct contrast with this view one of the most comprehensive American studies of child life in recent years concludes its findings on the institutional child with the observation: "Institutional care for the most part has produced uninspired individuals poorly adjusted to the outside world".<sup>4</sup> Dr. Nimkoff writes: "We can show that normal family life is indispensable to the proper development of the child's personality.

<sup>1</sup> Haire, *op. cit.* p. 67.

<sup>2</sup> B. B. Lindsey and Wainwright Evans, *The Revolt of Modern Youth* (London, etc., 1928), p. 95.

<sup>3</sup> De Pomerai, *op. cit.* pp. 307, 311, 305.

<sup>4</sup> *White House Conference on Child Health and Protection*, 1930, Century (New York, 1931), p. 134, quoted by M. F. Nimkoff, *The Child* (Chicago & Philadelphia, 1934), p. 148.

First, we need only to observe the advantages enjoyed by children who come out of any sort of home at all over those less privileged children who have been reared in institutions. . . . Second, the power of the home is apparent in the finding of modern science that the best treatment for maladjusted children of normal intelligence consists of their placement in desirable foster homes. A good home is the best medicine we can prescribe for a socially sick child".<sup>1</sup> Professor Folsom observes that there is a pronounced trend in America "away from the children's institution and toward placement in foster homes as a method of caring for orphaned children and children whose own parents are unfit or unable to care for them. It is urged that foster-home care is not only cheaper for the State, but also far better for the development of the child. Experience everywhere seems to indicate the superiority of the small home, even if it be a foster home, to the larger institution".<sup>2</sup> Floyd Dell writes: "Institutional life at its best has been notoriously drab and barren in comparison with ordinary family life. Institutional life has been found to fail in developing individual powers, and in furnishing incentives for growing up. It has characteristically turned out spiritless creatures, who do not know how to get along in the outside world. . . . The best modern institutions for children now model themselves upon the parental home, and try to give what it should give. . . . Even at their best, however, these institutions, when they replace the private home *entirely*, are regarded as makeshifts, as poor substitutes for a real home with real parents. And real homes and real parents are known to be so important to the child's development that it is more and more the practice that only as a last resort are homes broken up and children taken from their parents.

<sup>1</sup> Nimkoff, *op. cit.* p. 147 sq.

<sup>2</sup> Folsom, *op. cit.* p. 502.



Homes have to be very definitely found to be demoralising to the children, parents have to be given up as hopelessly incapable of improvement, before the best modern practice countenances such an extreme measure as destruction of the family union ".<sup>1</sup> Foremost of the special types of relief aiming to conserve the family is in the United States the so-called " mother's aid " or " mother's pensions ", which provide for the payment of a sum of money to certain groups of mothers with dependent children in order to enable the mother to remain at home with her family, instead of putting children of indigent parents into institutions.<sup>2</sup> Dr. W. J. Robinson goes so far as to say that " to give the child to a foundling asylum or to a ' baby farm ' means generally to condemn it to a slow death ".<sup>3</sup> According to Havelock Ellis, the mortality of artificially fed infants during the first year of life is seldom less than double, and sometimes as much as three times, that of the breast fed, or even more. He also points out that the advantages for an infant of being suckled by its mother are greater than can be accounted for by the mere fact of being suckled rather than hand fed, because the infant's best food is that elaborated in his mother's body. This has been shown by Vitrey,<sup>4</sup> who found from the statistics of the Hôtel-Dieu at Lyons that infants suckled by their mothers have a mortality of only 12 per cent., while in the case of infants suckled by strangers the mortality rises to 33 per cent.<sup>5</sup>

From Germany and Austria we also hear that exceptionally great infant mortality and other disadvantages are incident to life in an orphan asylum compared

<sup>1</sup> Floyd Dell, *Love in the Machine Age* (London, 1930), p. 119.

<sup>2</sup> M. F. Nimkoff, *The Family* (Cambridge, Mass., 1934), p. 476 sq.

<sup>3</sup> W. J. Robinson, *Woman Her Sex and Love Life* (New York, 1923), p. 268.

<sup>4</sup> Vitrey, *De la mortalité infantile*, Thèse de Lyon, 1907.

<sup>5</sup> H. Ellis, *Studies in the Psychology of Sex*, vi. (Philadelphia, 1923), p. 26 sq.

to ordinary family life;<sup>1</sup> investigations carried out in two such asylums at Würzburg, for instance, showed that the mental development of the children was abnormally backward.<sup>2</sup> Very interesting information comes from Soviet Russia, where the State has overtaken the functions of the home to a larger extent than in any other country. Great benefits were expected from the establishment of numerous State nurseries. Mr. Hindus writes: "In the nursery, the Russians protest, the child will get not less but more and better protection than any but the very rich homes could possibly offer. It will be fed, bathed, clothed in accord with the latest discoveries of science. In time of illness it will receive the immediate attention of a child specialist. It will not be pampered. It will not be abused. It will not be suppressed. Above all it will be kept from contact with vices, especially alcoholism, which now so brutally debauch the masses . . . . When Russia at some future date grows prosperous, homes will be provided for all children whose parents would care to place them there".<sup>3</sup> Yet, though it was expected that the State institutions would demonstrate the superiority of scientific care to maternal ignorance, the statistics of infant mortality in the institutions were discouraging and another method was tried. Dr. Lebedeva, head of the department for the protection of motherhood and infancy, has made the following statement: "If we had better equipment, better trained

<sup>1</sup> Hermine Hug-Hellmuth, 'Die Bedeutung der Familie für das Schicksal des Einzelnen', in *Zeitschrift für Sexualwissenschaft*, ix. (Bonn, 1923), p. 328 sq.; L. D. Pesl, 'Fruchtabtreibung und Findelhaus', *ibid.* xv. (Berlin & Köln, 1928), p. 321 sq.; 'Vaterlose Kindheit', *ibid.* xvi. (Berlin & Köln, 1929), p. 148.

<sup>2</sup> M. Marcuse, 'Eugenische Tagung zu Berlin, 26.-28. Oktober. 1928', *ibid.* xv. (Berlin & Köln, 1928), p. 416 sq.

<sup>3</sup> M. Hindus, *Humanity Uprooted* (London, etc., 1929), pp. 111, 112, 94. Cf. Alice Withrow Field, *Protection of Women and Children in Soviet Russia* (London, 1932), p. 28.



personnel in our institutions, it might have been different. But under our present conditions there is no doubt that the home offers a more stimulating environment for the development of the infant than the asylum. Not only have we decreased the death rate in this way, but we have insured normal development to a much larger proportion of babies, since in almost every case our asylum-trained babies were both mentally and physically backward". The method that proved to be the best with orphans was putting them into carefully selected private family homes, with the result that twice as many of them remained alive.<sup>1</sup>

Present conditions in Russia demonstrate how injurious the lack of family influence is not only to orphans but also to older children. Mr. Cummings wrote in 1935: "It is a grave fact that in the last two years child delinquency has enormously increased in all parts of Russia. So much so that a few weeks ago when I was still on tour in the country a surprising decree was issued from Moscow which announced that in future child delinquents would be subject to the same penalties as those imposed upon adult criminals. . . . Why has this delinquency and ill-discipline among children developed so dangerously? I believe it is due, above all, to the fact that millions of homes are deserted for a greater part of each day by both parents so that the children are left to fend for themselves without parental guidance and discipline".<sup>2</sup>

Many facts thus support the general belief that there is no adequate substitute for the beneficial influence which parents as a rule exercise upon their children, that the love of the parents towards the child is one of the most essential features if the child's moral and emotional development is to proceed harmoniously. In these circumstances I can find no reason to suppose

<sup>1</sup> Lebedeva, quoted by Dell, *op. cit.* p. 121.

<sup>2</sup> A. J. Cummings, in *News Chronicle*, May 29, 1935.

that it could be in the interests of the State in the future to break up the family. The Bolsheviki's suspicious attitude towards it is due to their view that private property has always served as a cementing bond in the family; and to demolish private property is the object of the most feverish efforts of the new society. It is considered to be of great importance that the mentality of the Russian youth should be largely moulded by agencies outside the home, away from the family circle; in the kindergartens and schools it is always made to feel that the supreme aim in life is the promotion of the purposes of the new society. Yet, though the rulers of Russia regard the family as a menace to their ultimate designs, they find it at the present stage of readjustment indispensable to the maintenance of social stability.<sup>1</sup> But they have obviously underrated its vitality. The persistence of the family does not depend upon the preservation of private property. Its safest guarantee is the love of man and woman for each other and for their children; and the Bolsheviki are even said to assure themselves that this bond will gain in firmness when property has passed from private to social control.<sup>2</sup>

The feelings of parents would naturally make them averse to any attempt to separate their children from them. The mother would not be compensated for the loss of her own baby by being used as a nurse for somebody else's baby. Herbert Spencer thought that maternal love is not adequately defined as the instinct which attaches a creature to its own young, since it is not exclusively displayed in that relation: he identified it with the love of the helpless, stimulated by the perception of "smallness joined, usually, with relative inactivity, being the chief indications of incapacity".<sup>3</sup>

<sup>1</sup> Hindus, *op. cit.* pp. 101, 102, 109.

<sup>2</sup> *Ibid.* p. 143.

<sup>3</sup> H. Spencer, *The Principles of Psychology*, ii. (London, 1890), p. 623 *sq.* See also D. Hartley, *Observations on Man*, i. (London, 1810), p. 497.



That maternal love is to some extent love of the helpless is obvious from the fact that it originally lasts only as long as the young are unable to shift for themselves. But Spencer's theory fails to explain how it is that, even in a gregarious species, mothers make a distinction between their offspring and other young. During my stay among the peasants of Morocco I was struck by the eagerness with which in the evening, when the flocks of ewes and lambs were reunited, each mother sought for her own lamb and many a lamb, at least, for her mother; and the same can be testified by every shepherd. Mr. J. Corin writes: "Mix the ewes and the lambs as one will, and they sort themselves. The lamb does not always know its mother, but the ewe knows her lamb—by smell. If the wrong lamb comes to her, she savagely butts it away. The unwillingness of a ewe to suckle a strange lamb is the great trouble of shepherds. When a mother has lost her lamb, and the shepherd wishes to make her adopt another, to save her from trouble with milk-congestion, and to relieve another ewe burdened with twins, he has very great difficulty. Often he has to resort to the practice of skinning the dead lamb and wrapping its skin round the one to be adopted. Even then he may be unable to deceive the mother—perhaps he would not do so in any case, did not milk-pains compel her. At this not unusual country practice I have assisted shepherds in my young days".<sup>1</sup> A similar discrimination between an animal's own young ones and other young has been found even in cases of conscious adoption. On the authority of Brehm, Darwin tells us of a female baboon which had so capacious a heart that she not only adopted young monkeys of other species, but stole young dogs

<sup>1</sup> J. Corin, *Mating, Marriage, and the Status of Woman* (London, & Felling-on-Tyne, 1910), p. 17. This practice is also described by Thomas Hardy in *Far from the Madding Crowd* (London, 1922), p. 139.

and cats which she continually carried about; yet her kindness did not go so far as to share food with her adopted offspring, although she divided everything quite fairly with her own young ones.<sup>1</sup> To account for maternal love we must thus assume the existence of some other stimulus besides the perception of smallness and helplessness, which produces, or at least strengthens, the instinctive response in the mother. This stimulus can only be rooted in the external relationship in which the offspring stand to the mother from the very beginning. She is in close proximity to her helpless young from their tenderest age; and she loves them because they are to her a cause of pleasure.

The stimuli to which paternal love responds are apparently derived from the same circumstances as those which call into activity maternal love, the helplessness and proximity of the offspring; wherever it exists the father is near his young from the beginning. And, as in the case of maternal love, the instinctive response may be assumed to be the result of a process of natural selection, which has preserved a mental disposition necessary for the existence of the species in which it is found. Professor McDougall asks how we can account for the fact that men are at all capable of this emotion and of this protective impulse; and his answer is that in its racial origin the instinct was undoubtedly primarily maternal, but, like many other characters, was transmitted to the other sex.<sup>2</sup> To me it seems that the origin of the paternal instinct offers no more difficult problem to solve than that of the maternal instinct. How could Professor McDougall's theory account for the parental instinct of those species in which it is

<sup>1</sup> C. Darwin, *The Descent of Man* (London, 1890), p. 70. See also F. Alverdes, *Social Life in the Animal World* (London, 1927), p. 135.

<sup>2</sup> W. McDougall, *An Introduction to Social Psychology* (London, 1926), p. 59.



found exclusively in the male, as is the rule among fishes that take any care at all of their offspring, and among certain frogs?<sup>1</sup> Among the birds there are a few species in which both the brooding and the care of the newly hatched young devolve exclusively on the male.<sup>2</sup> In mankind knowledge of the physiological function of the father in the conception of the child has no doubt intensified the sentiment of paternal love, but is not essential to it. Among animals there can of course be no such knowledge; and the paternal sentiment exists also among those peoples who are said to be ignorant of the father's participation in parentage or whose ideas about it are of the very vaguest description.

It might perhaps be supposed that the prevalence of the custom of infanticide among a large number of peoples testifies that parental instincts must be very feeble among them. Among many of the lower races custom decides how many children are to be reared in each family, and not infrequently the majority of infants are destroyed. There can be little doubt that this wholesale infanticide is in the main due to the hardships of savage life. The helpless infant may be a great burden to the parents both in times of peace and in times of war. It may prevent the mother from following her husband about on his wanderings in search of food, or otherwise encumber her in her work. Moreover, a little forethought tells the parents that their child before long will become a consumer of provisions already too scanty for the family. Savages often suffer greatly from want of food, and may have to choose between destroying their offspring or famishing themselves.

<sup>1</sup> A. C. L. G. Guenther, *An Introduction to the Study of Fishes* (Edinburgh, 1880), p. 163; A. Sutherland, *The Origin and Growth of the Moral Instinct*, i. (London, 1898), p. 32 *sqq.*; L. A. Jägerskiöld, *Några valda drag ur djurens vård om sina ungar* (Stockholm, 1902), p. 19 *sqq.*; Alverdes, *op. cit.* p. 66 *sq.*

<sup>2</sup> Sutherland, *op. cit.* i. 59 *sq.*; Jägerskiöld, *op. cit.* p. 35; *idem*, *Om spel och parningslekar hos djuren* (Stockholm, 1908), p. 146.

Hence they often have recourse to infanticide as a means of saving their lives; indeed, among several tribes, in case of famine, children are not only killed but eaten. Urgent want is frequently represented by our authorities as the main cause of infanticide; and their statements are corroborated by the conspicuous prevalence of this custom among poor tribes and in islands whose inhabitants are confined to a narrow territory with limited resources. Infanticide on a large scale prevails, or has prevailed, not only in the savage world but also among semi-civilised and civilised races, such as the Chinese, the ancient Arabs, and various Hindu castes. The exposure of new-born infants was practised by Indo-European peoples in ancient times. In the case of deformed or sickly infants it was a custom in Greece and Rome, approved of by their philosophers. Aristotle even proposed that the number of children allowed to each marriage should be regulated by the State, and that, if any woman happened to become pregnant after she had produced the prescribed number, an abortion should be procured before the foetus had life. These views were in perfect harmony with the general tendency of the Greeks to subordinate the feelings of the individual to the interest of the State. Confined as they were to a very limited territory, they were naturally afraid of being burdened with the maintenance of persons whose lives could be of no use.

It is important to notice that the custom of infanticide in most cases requires that the child should be killed immediately or soon after its birth, when the parental affection for it is as yet only dawning. We are told of the Society Islanders that "if the little stranger was, from irresolution, the mingled emotions that struggled for mastery in its mother's bosom, or any other cause, suffered to live ten minutes or half an hour, it was safe; instead of a monster's grasp, it received a mother's caress and a mother's smile, and was afterwards nursed



with solicitude and tenderness ". Almost the same is said of other South Sea Islanders and of Australian tribes. That the custom of infanticide is generally restricted to the destruction of new-born babies also appears from various statements as to the parental love of those savages who are addicted to this practice. So, too, among more cultured peoples whose customs allow or tolerate infanticide, the child who is not suffered to live has to be killed in its earliest infancy. Among the Chinese and Rajputs it is destroyed immediately after its birth. In the Scandinavian North the killing or exposure of an infant who had already been sprinkled with water was regarded as murder. At Athens parents were punished for exposing children whom they had once begun to rear.<sup>1</sup>

It has been said that among ourselves the maternal instinct seems to be more pronounced in the poor and ignorant than in the cultured and civilised.<sup>2</sup> Clara Thorbecke observes that among the labouring classes in German cities unmarried mothers are reluctant to commit their children to the care of strangers;<sup>3</sup> but when women of the upper classes behave differently in similar situations we must remember the social degradation that threatens them. Bertrand Russell thinks " that civilisation, at any rate as it has hitherto existed, tends greatly to diminish women's maternal feelings. It is probable ", he says, " that a high civilisation will not in future be possible to maintain unless women are paid such sums for the production of children as to

<sup>1</sup> E. Westermarck, *The Origin and Development of the Moral Ideas*, i. (London, 1912), p. 396 *sqq.*

<sup>2</sup> W. J. Robinson, *Sexual Problems of To-day* (New York, 1922), p. 295; W. Stekel, *Die Geschlechtskälte der Frau* (Berlin & Wien, 1927), p. 489.

<sup>3</sup> Clara Thorbecke, ' Die sozialen Bedingtheiten der Pubertätsentwicklung bei der weiblichen proletarischen Grossstadtjugend ', in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xvi. (Berlin & Köln, 1929), p. 29.

make them feel it worth while as a money-making career".<sup>1</sup> His prophecy of this novel kind of business is connected with his idea, already referred to, that even nowadays women only profess maternal feelings in order to please the men. Neurologists also tell us that there are many women who are absolutely lacking in such feelings.<sup>2</sup> But in my opinion it would be a true marvel if an instinct so indispensable for all mammalian species as is the maternal instinct could ever disappear; we might as well imagine that this would happen to sexual love, nay even to the pure sexual impulse. True, there are writers who dream of a time when our present method of reproduction will be replaced by artificial generation without sexual intercourse.<sup>3</sup>

So far as I can see, then, there is every reason to believe that the unity of sensual and spiritual elements in sexual love, leading to a more or less durable community of life in a common home, and the desire for and love of offspring, are factors which will remain lasting obstacles to the extinction of marriage and the collapse of the family, because they are too deeply rooted in human nature to fade away, and can find adequate satisfaction only in some form of marriage and the family founded upon it. There will of course always be large numbers of people who for some reason or other will not marry, who are not suitable for marriage, who never fall in love or cannot marry the one they fall in love with, who do not miss the kind of home provided by married life, who have no desire for children. Marriage is not made for everybody, not attractive to everybody, nor good for everybody who

<sup>1</sup> B. Russell, *Marriage and Morals* (London, 1929), p. 170.

<sup>2</sup> Stekel, *op. cit.* p. 492.

<sup>3</sup> Weressajew and others, quoted by H. Vorwahl, 'Zur rationalisierung des Zeugungstriebes', in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xviii. (Berlin & Köln, 1931), p. 194; J. B. S. Haldane, *Daedalus* (London, 1924), p. 63 *sqq.*



embarks in it. (It is the cause of much suffering; it is bleeding from a thousand wounds. As Stevenson said, "marriage is like life in this—that it is a field of battle, and not a bed of roses".<sup>1</sup>) But without it there would presumably be still more suffering in the world, and much less happiness. It is flexible: it may be improved by increasing knowledge, forethought, and self-control, by changed social and moral attitudes towards sexual relationships, by legal reforms. And while the persistence of marriage is conducive to individual welfare, it is apparently indispensable to the social order.

<sup>1</sup> R. L. Stevenson, *Virginibus Puerisque and Other Papers* (London, 1925), p. 15.

## CHAPTER IX

### MONOGAMY AND POLYGAMY

IN expressing my belief in the persistence of marriage I spoke of some form of marriage; I did not say monogamous marriage. Even in the Christian world monogamy has not always been the only form of marriage in the past. And there are writers who maintain that it will not be so in the future.

Although the New Testament assumes monogamy as the normal or ideal form of marriage, it does not expressly prohibit polygyny, except in the case of a bishop or a deacon.<sup>1</sup> It has been argued that it was not necessary for the first Christian teachers to condemn polygyny because monogamy was the universal rule among the peoples in whose midst it was preached; but this is certainly not true of the Jews, who still both permitted and practised polygyny at the beginning of the Christian era. Some of the Fathers accused the Jewish Rabbis of sensuality;<sup>2</sup> but no Council of the Church in the earliest centuries opposed polygyny, and no obstacle was put in the way of its practice by kings in countries where it had occurred in the times of paganism. In the middle of the sixth century Diarmait, king of Ireland, had two queens and two concubines.<sup>3</sup> Polygyny was frequently practised by

<sup>1</sup> 1 *Timothy*, iii. 2, 12.

<sup>2</sup> S. Krauss, *Talmudische Archäologie*, ii. (Leipzig, 1911), p. 28.

<sup>3</sup> H. d'Arbois de Jubainville, *Cours de littérature celtique*, vi. (Paris, 1899), p. 292.



the Merovingian kings. Charlemagne had two wives and many concubines; and one of his laws seems to imply that polygyny was not unknown even among priests.<sup>1</sup> This, of course, does not mean that such a practice was recognised by the Church; nor must the permissions granted to kings be taken as evidence of her rules, for, as the Council of Constantinople decided in 809, "Divine law can do nothing against Kings".<sup>2</sup> Yet in the earlier part of the Middle Ages the strenuous general rule of monogamy was relaxed in certain exceptional circumstances, as in cases of sexual impotency and of enforced or voluntary desertion.<sup>3</sup> In later times Philip of Hesse and Frederick William II. of Prussia contracted bigamous marriages with the sanction of the Lutheran clergy.<sup>4</sup> Luther himself approved of the bigamy of the former, and so did Melanchthon.<sup>5</sup> On various occasions Luther speaks of polygyny with considerable toleration. It had not been forbidden by God; even Abraham, who was a "perfect Christian", had two wives. God had allowed such marriages to certain men of the Old Testament in particular circumstances, and if a Christian wanted to follow their example he had to show that the circumstances were similar in his case;<sup>6</sup> but polygyny was undoubtedly preferable to divorce.<sup>7</sup> In 1650, soon after the Peace of Westphalia, when the population had been greatly reduced by the 'Thirty Years' War, the Frankish

<sup>1</sup> A. Thierry, *Narratives of the Merovingian Era* (London, [1845]), p. 17 *sqq.*; F. von Hellwald, *Die menschliche Familie* (Leipzig, 1889), p. 558 n. 1; H. Hallam, *View of the State of Europe during the Middle Ages*, i. (Paris, 1840), p. 420 n. 2.

<sup>2</sup> W. Smith and S. Cheetham, *A Dictionary of Christian Antiquities*, i. (London, 1875), p. 207.

<sup>3</sup> H. Ellis, *Studies in the Psychology of Sex*, vi. (Philadelphia, 1923), p. 499.

<sup>4</sup> E. Friedberg, *Lehrbuch des katholischen und evangelischen Kirchenrechts* (Leipzig, 1909), p. 436, note to § 143.

<sup>5</sup> J. Köstlin, *Martin Luther*, ii. (Berlin, 1903), p. 475 *sqq.*

<sup>6</sup> *Ibid.* i. 693 *sq.*

<sup>7</sup> *Ibid.* i. 347; ii. 257.

*Kreistag* at Nuremberg passed the resolution that thenceforth every man should be allowed to marry two women.<sup>1</sup> Certain Christian sects have even advocated polygyny with much fervour. In 1531 the Anabaptists openly preached at Munster that he who wants to be a true Christian must have several wives.<sup>2</sup> Among the Mormons the duty of polygyny, when economic resources permitted, was urged upon the men, both as a means of securing eternal salvation and as a step in harmony with their earthly interests.

Group-marriage or, as it was called, "complex marriage" was practised by the Oneida Community in Madison county, New York, which was established in 1848 by John Humphrey Noyes and consisted mostly of descendants of New England Puritans. It embodied the principle of community of goods and interests, and devised a new system of sexual relationships in harmony with this principle. All the men were the actual or potential husbands of all the women, though every man was not free to have children with every woman. This community of wives was based on Noyes' interpretation of certain passages of the New Testament, but he also appealed to the law of nature in support of it. "Sexual love", he says, "is not naturally restricted to pairs. Second marriages are contrary to the one-love theory, and yet are often the happiest marriages. Men and women find universally (however the fact may be concealed) that their susceptibility to love is not burnt out by one honeymoon, or satisfied by one lover. On the contrary, the secret history of the human heart will bear out the caution that it is capable of loving any number of times and any number of persons, and that the more it loves the more it can love. This is the law of nature, thrust out of sight and condemned by common consent, and yet

<sup>1</sup> Von Hellwald, *op. cit.* p. 559 n.

<sup>2</sup> *Ibid.* p. 558 n. 1.



secretly known to all". Of monogamy we are told that it provokes to secret adultery, ties together unmatched natures, sunders matched natures, gives to sexual appetite only a scanty and monotonous allowance, and makes no provision for the sexual appetite at the very time when that appetite is strongest.<sup>1</sup> In 1879, however, Noyes proposed that the community should give up the practice of complex marriage, not as renouncing his belief in the principles and prospective finality of that institution, but in deference to public sentiment.<sup>2</sup> The Oneida Community then came to an end. The hope, cherished by some of its members, that the discovery of Noyes would in the future be accepted and adopted by the world at large needs no consideration. Group-marriage is supposed by several anthropologists, though quite arbitrarily, to have been the earliest form of marriage, but it may be left out of account in any discussion of the possible modifications of marriage in Western civilisation. Genuine group-marriage is known to exist only among peoples who practise polyandry, and then as a combination of polygyny with polyandry.<sup>3</sup>

The suggestion that polygyny will in the future be a legally recognised form of marriage deserves more attention. In England proposals were made, in the seventeenth and eighteenth centuries, to legalise it as a means of restraining infanticide, adultery, prostitution, and the evils of sexual intercourse outside marriage.<sup>4</sup> In more recent times James Hinton declared that although monogamy may be good, nay even the only good order, if of free choice, a law for it is another

<sup>1</sup> J. H. Noyes, *History of American Socialisms* (Philadelphia & London, 1870), p. 624 *sqq.*

<sup>2</sup> *The Encyclopædia Britannica*, xx. (Cambridge, 1911), p. 106.

<sup>3</sup> E. Westermarck, *The History of Human Marriage*, iii. (London, 1921), p. 223 *sqq.*

<sup>4</sup> Ellis, *op. cit.* vi. 500.

thing.<sup>1</sup> We have arrived at it as a legal and universal form to carry it out in its integrity, and so actually called into being more licentiousness than would be possible under an open polygyny. A forced monogamy is responsible for many of the evils of prostitution, and leads to hatred and quarrels, to intense jealousy in women, and to an insistence on the mere physical relationship which turns spontaneity and purity into corruption.<sup>2</sup> “The woman’s natural jealousy is not at a man’s loving another but at his forsaking her. So, with the thought of love as necessarily meaning love for one only, two things become identified and the passion of jealousy becomes degraded even from its own poor nature to one infinitely worse. It is the association of love with exclusiveness that has done this”.<sup>3</sup> On the other hand, “how perfect a gain is the idea of polygamy voluntarily accepted—or rather insisted on—by woman (at least the legal right to it)”; it is the women who will lead the way.<sup>4</sup> That fine polygamy will break down “the restraint on the married women which compels them to hold the position of possessing to the exclusion of others; against their will and wish, but seeming their duty. . . . The wife is set free to give”. Hinton asks how a woman can make a more beautiful gift to her sister than by sharing the finest things in life with her.<sup>5</sup> Mrs. Havelock Ellis, who has published extensive extracts from Hinton’s manuscripts, says that, though his idea was clean and fine, “he failed to realise that his Quixotic cry to wives to become heroines, to distribute joy and to call on men to put aside impurity through a fine polygamy, was to a great extent a masculine claim in its mode of proclamation. Hinton’s ‘polygamy’ was always a polygyny and never a polyandry”.<sup>6</sup>

<sup>1</sup> Mrs. Havelock Ellis, *James Hinton* (London, 1918), p. 138.

<sup>2</sup> *Ibid.* pp. 124, 138, 142.

<sup>3</sup> *Ibid.* p. 147.

<sup>4</sup> *Ibid.* p. 160 sq.

<sup>5</sup> *Ibid.* pp. 170, 172.

<sup>6</sup> *Ibid.* p. 153.



Other writers advocate the legalisation of polygyny on more realistic grounds. Dr. Cope sees no objection to voluntary polygyny or polyandry being permitted, if agreed to by all three parties. "Under ordinary circumstances", he says, "very few persons would be found willing to make such a contract, but there are some cases of hardship which such permission would remedy. Such, for instance, would be the case where the man or woman had become the victim of a chronic disease; or, where either party should be childless, and in other contingencies that can be imagined". For the most part, he adds, "the best way to deal with polygamy is to let it alone".<sup>1</sup> So also according to Mr. Southern, the preference that most people give to monogamy is no reason why the State should enforce it: "so far as other forms of marriage can be practised by mutual consent, and without detrimentally affecting children, the State hasn't a ghost of a right to veto them".<sup>2</sup> Dr. Norman Haire, who maintains that legalised polygamy would offer many advantages for the majority of people, argues that "if the children are supported by the State there need be no limit, except personal inclination, to the number of legal mates a man or woman might have. . . . Before marriage the man and woman would state whether they desired the union to be monogamous or polygamous. If one wanted monogamy and the other were unwilling to agree to this, the marriage would not take place".<sup>3</sup> Professor Dunlap thinks it may well be that certain individuals cannot attain complete satisfaction in monogamy, but may reach a highly satisfying adaptation

<sup>1</sup> E. D. Cope, 'The Marriage Problem', in *The Open Court*, ii. (Chicago, 1888), p. 1324.

<sup>2</sup> G. W. R. Southern, *Making Morality Modern* (Mosman, N.S. Wales, [1934]), p. 18 sq.

<sup>3</sup> Norman Haire, *Hymen or the Future of Marriage* (London, 1928), p. 63 sqq.

in polygynous or polyandrous marriage; and that the system of the future therefore will leave individuals free to form whatever type of matrimonial alliances are most advantageous to them.<sup>1</sup> "Change, variety, newness", says Mr. Calverton, "seems to be part of the ineluctable demands of the sexual impulse. . . . The change of economic system and social environment alone have rendered monogamy a struggling fiction. It is part of an old age. It cannot be the marital basis of the new. The direction of economic life, and the drive of sexual impulse, are in revolt against it. What has happened in Soviet Russia represents only the vanguard of this change".<sup>2</sup> But, as a matter of fact, Soviet law lays down that the existence of a registered or an unregistered marriage is an obstacle to the registration of a second one.<sup>3</sup>

In France, Dr. Le Bon has predicted that European legislation in the future will recognise polygyny;<sup>4</sup> and, more recently, Georges Anquetil has strongly advocated it. He argues that both men and, in a smaller degree, women are by nature polygamous, and that monogamous marriage is the outcome of social conditions alone. Like Engels<sup>5</sup> he attributes it to the subjugation of woman by man and his treatment of her as a piece of property. A return to polygyny, the natural relationship between the sexes, would remedy many evils: prostitution, venereal disease, abortion, the misery of illegitimate children, the misfortune of millions of unmarried women resulting from the disproportion between the sexes, adultery, and even jealousy, since

<sup>1</sup> Knight Dunlap, *Civilized Life* (London, 1934), p. 180 sq.

<sup>2</sup> V. F. Calverton, *The Bankruptcy of Marriage* (London, 1931), p. 283.

<sup>3</sup> Fannie W. Halle, *Die Frau in Sowjetrussland* (Berlin, etc., [1932]), p. 189.

<sup>4</sup> G. Le Bon, *La Civilisation des Arabes* (Paris, 1884), p. 424.

<sup>5</sup> F. Engels, *On the Origin of the Family, Private Property and the State* (Chicago, s.d.), p. 79.



the disregarded wife would find consolation in her cognisance of not being secretly deceived by her husband.<sup>1</sup> Hans Blüher maintains that a man really requires for his complete satisfaction two women of different types, one of the "Penelope" type, who creates the home and bears children, and another who, like the Greek *hetaira*, gratifies his spiritual needs;<sup>2</sup> and he consequently demands, as a noble and needful institution, "the sacrament of polygyny", consisting of one man's enduring relation both to a dependent spouse and to a free woman.<sup>3</sup> A radical champion of polygyny is Professor Christian von Ehrenfels, who regards it as necessary for the preservation of the Aryan race. He argues that as among animals the males engage in combats with each other for the possession of the female and the strongest of them become the propagators of the species, so also should the propagation of the human race be brought about by the men who are best suited for this task. As the sexes are about equal in number, polygyny would be a natural consequence of this arrangement, and the women would hardly offer any objection to it, being proud of their motherhood and the distinction conferred on them by it.<sup>4</sup> It seems to have escaped Professor Ehrenfels' attention that in modern society the polygyny proposed by him would presumably become the prerogative of the wealthy men, who are not apt to be the best propagators of the race.<sup>5</sup>

<sup>1</sup> G. Anquetil, *La Maîtresse légitime* (Paris, 1922), *passim*.

<sup>2</sup> H. Blüher, *Die Rolle der Erotik in der männlichen Gesellschaft*, ii. (Jena, 1919), p. 27 *sqq.*

<sup>3</sup> *Ibid.* ii. 77 *sqq.*

<sup>4</sup> Chr. von Ehrenfels, *Sexualethik* (Wiesbaden, 1907), p. 9 *sqq.*; *idem*, 'Die konstitutive Verderblichkeit der Monogamie und die Unentbehrlichkeit einer Sexualreform', in *Archiv für Rassen- und Gesellschafts-Biologie*, iv. (München, 1907), pp. 615-651, 803 *sqq.*; *idem*, 'Erwiderung auf Dr. A. Ploetz' Bemerkungen zu meiner Abhandlung über die konstitutive Verderblichkeit der Monogamie', *ibid.* v. (1908), p. 97 *sqq.*

<sup>5</sup> Cf. S. Ribbing, in A. Moll, *Handbuch der Sexualwissenschaften* (Leipzig, 1912), p. 933.

In discussing what chances there may be for polygyny to become a legally recognised institution in Western civilisation, the experience of its nature and causes gained from countries where it exists may be of some use. One factor that influences the form of marriage is undoubtedly the numerical proportion of available males and females.<sup>1</sup> Although our knowledge of the proportions of the sexes among the lower races is very defective, I think we may safely say that whenever there is a marked and more or less permanent majority of marriageable women in a savage tribe polygyny is allowed. I have found no reliable statement to the contrary, and cannot believe that savage custom would make monogamy obligatory if any considerable number of women were thereby doomed to celibacy. But when an excess of females leads to polygyny it is really only an indirect cause of it. It facilitates polygyny or makes it possible, while the direct cause is, generally, the men's desire to have more than one wife. If polygyny were permitted in modern civilisation its actual prevalence would also be influenced by the women's feelings about it. It is said that if we reckon the age of marriage from twenty to fifty years, the disproportion between the sexes causes at least three or four women per cent. to be, in normal circumstances, compelled to lead a single life in consequence of our obligatory monogamy.<sup>2</sup> But the introduction of polygyny would by no means guarantee that the number of married women would become larger than it is now. At the lower stages of civilisation nearly every man endeavours to marry when he has reached the age of puberty, and practically every woman gets married; but nothing of the kind would happen among ourselves. The number of women who have to remain single on

<sup>1</sup> *The History of Human Marriage*, iii. 52 sqq.

<sup>2</sup> A. von Oettingen, *Die Moralstatistik in ihrer Bedeutung für eine Socialethik* (Erlangen, 1882), p. 60.



account of the disproportion between the sexes would certainly be a most fragile ground for legalising polygyny.

We shall now consider the main reasons why a man may desire to have more than one wife. Among many peoples the husband must abstain from his wife during her pregnancy. A pregnant woman is often regarded as unclean, that is, more or less dangerous; she may even be forbidden to wait upon her husband or to eat with him, and sexual intercourse with her is also believed to injure or kill the child.<sup>1</sup> There may, however, be other than superstitious grounds for this taboo, and the superstitions themselves may ultimately have a biological foundation. As soon as the female mammal is impregnated she rejects all advance of the male until, after birth and lactation are over, another period of heat sets in. We are told that all monkeys, as an exception to the rule, tend to have sex intercourse until within a few weeks or even days of parturition;<sup>2</sup> but this statement is based upon experience of monkeys in captivity, and it is quite possible that captivity has deranged their normal reproductive functions.<sup>3</sup> Dr. Havelock Ellis says that "as men have emerged from barbarism in the direction of civilisation, the animal instinct of refusal after impregnation has been completely lost in women", and that, "in civilised women at all events, coitus during pregnancy is usually not less agreeable than at other times and by some women is felt indeed to be even more agreeable".<sup>4</sup> But Dr. Emanuele Meyer maintains that when sexual excitement is felt by women after impregnation it is due to transitory irritation, and that the majority of pregnant women

<sup>1</sup> *The History of Human Marriage*, iii. 66.

<sup>2</sup> G. V. Hamilton, *A Research in Marriage* (New York, 1929), p. 119.

<sup>3</sup> See my book, *Three Essays on Sex and Marriage* (London, 1934), p. 200.

<sup>4</sup> Ellis, *op. cit.* vi. 17. Cf. A. Moll, *Untersuchungen über die Libido sexualis* (Berlin, 1898), p. 263 sq.

have no desire for sexual intercourse even with the most beloved husband and, in most cases, no sexual feelings during such intercourse.<sup>1</sup> Of 81 married women who answered Dr. Hamilton's questions on this subject, 28 stated that pregnancy did not essentially affect their sex desire, 25 that they experienced increased, and 32 that they experienced decreased, desire during one phase or another of at least one pregnancy.<sup>2</sup> But in no case does pregnancy, among ourselves, lead to general abstinence from conjugal intercourse, and however desirable it may be proved to be in certain cases and at certain stages of pregnancy, I think such abstinence is ruled out as a cause of prospective polygyny. The same may be said of abstinence after childbirth until the child is weaned, which is a very widespread cause of polygyny, and all the more important as among simple peoples the suckling-time often lasts for years.<sup>3</sup>

Other reasons for polygyny which are very potent among numbers of peoples, but would not exist at all in modern civilisation, are of an economic or social character: it contributes to a man's material comfort or increases his wealth through the labour of his wives, and at the same time adds to his social importance, reputation, and authority. The usefulness of wives as labourers largely accounts for the increasing tendency to polygyny at the higher grades of savage culture; but economic progress also leads to a more unequal distribution of wealth, and this, combined with the necessity of paying a bride-price, the amount of which is more or less influenced by the economic conditions, makes it possible for certain men to acquire several wives whilst others can acquire none at all. Polygyny thus comes to be associated with greatness and to be

<sup>1</sup> F. Landmann, ' Schwangerschaftsinstinkt ', in *Zeitschrift für Sexualwissenschaft*, xiv. (Berlin & Köln, 1927), p. 26.

<sup>2</sup> Hamilton, *op. cit.* p. 129.

<sup>3</sup> *The History of Human Marriage*, iii. 67 sqq.



regarded as honourable and praiseworthy, whereas monogamy, as associated with poverty, is considered mean.<sup>1</sup>

Polygyny is, moreover, practised as a means of obtaining a large progeny: man in a savage or barbarous state of society is proud of a large family, and he who has most kinsfolk is most honoured and most feared. I think that polygyny would offer no such inducement among us. A different thing is that the barrenness of a wife is a very common reason for the choice of another partner in addition to the former one. The desire for offspring is one of the principal causes of polygyny in the East. The polygyny of the ancient Hindus seems to have been due chiefly to the dread of dying childless, and the same motive persists among their modern descendants. Many a Mohammedan takes an additional wife only if the first one is barren, and he is too much attached to her to divorce her. It was in the hope of obtaining offspring that Anaxandridas, king of Sparta, and Diarmait, king of Ireland, contracted a second marriage.<sup>2</sup> It is conceivable that some men among ourselves might follow their example if they were permitted to do so. I knew a fisherman in Finland who divorced his wife because she bore him no child and took another one, and then lived together with both.

We now at last come to two very important causes of polygyny which have a bearing on the question under discussion: the attraction that female youth and beauty exercise upon men, and man's taste for sexual variety. It is these characteristics of the sexual instinct, particularly the latter one, that are thought of when it is said that the man is naturally polygamous and that, consequently, polygyny is in concordance with nature.

From circumstances that lead to polygyny we shall now turn our attention to such as make for monogamy. Where the sexes are about equal in number, or there is

<sup>1</sup> *Ibid.* iii. 80 *sqq.*

<sup>2</sup> *Ibid.* iii. 75 *sqq.*

an excess of men, and a woman consequently has a fair chance of getting a husband for herself, she will hardly care to become the second wife of a man who is already married, or her parents will hardly compel her to marry such a man, unless some particular advantages, economic or social, are gained by it. Hence the absence of disparity in wealth or rank in a society tends to make monogamy general. To judge by my collection of facts, polygyny has not been practised on a considerable scale by any of the lowest savages, except some Australian and Bushman tribes. Again, where there is inequality of wealth or otherwise considerable social differentiation, the poor or low-class people may have to be satisfied with one wife even though there be an excess of females. We often hear that a man must live in monogamy owing to the price he has to pay for a bride or to the difficulty of maintaining several wives. Such a difficulty would certainly be a great obstacle to polygyny in modern civilisation, where so many men cannot afford to maintain even a single wife. The expenses of having several are very frequently increased by the necessity of providing each wife with a separate dwelling. In my collection of facts from the savage world the cases where each wife is said to live in a house by herself are nearly six times as many as those in which the wives are said to live together. The custom of giving a separate dwelling to each wife is intended to prevent quarrels and fights.

True, we often hear that no jealousy or rivalry disturbs the peace in polygynous families. In many cases we are told that the women do not object to polygyny, or that they rejoice at the arrival of a new wife, or themselves bring their husband a fresh one when they become old or prove barren, or that they approve of polygyny because it implies a division of labour, or increases the reputation of the family or the authority of the first wife, or gives greater liberty to the



married women. This notwithstanding I have found that polygyny is more frequently reported to be a cause of quarrel and domestic misery in the savage world. In Mohammedan countries, also, it occasions much strife and unhappiness. So far as my experience goes, there is in Morocco nothing that a married woman dreads more than the introduction of a fresh wife, nor any more frequent object for her witchcraft than to prevent such a fatality or to make her husband incapable of having sexual intercourse with a fellow-wife. In India, both among Mohammedans and Hindus, there is much intriguing and disquiet in polygynous families; and the same seems to have been the case in ancient times—in the Rig-Veda there are hymns in which wives curse their fellow-wives. In Hebrew the popular term for the second wife was *haṣṣārāh*, meaning “female enemy”. In China many women are said to dislike altogether the idea of getting married because they fear the misery which is in store for them if their husbands take other wives; hence some become Buddhist or Taoist nuns, and others prefer death by suicide to marriage.<sup>1</sup> Would the fellow-wives in the West be more amiable to each other than they are in the East? I am not certain that they would; and the husband might have a harder time of it than he has there, for he has not the same coercive power over his wife as has the Oriental husband.

Female jealousy may be a hindrance to polygyny either because the husband for his own sake dreads its consequences, or because his wife simply prevents his taking another wife, or because he has too much regard for her feelings to do so. Even in the savage world a married woman often occupies a respected and influential position, and the relations between man and wife may be of a very tender character. As I have shown elsewhere, this is said to be the case among many uncivilised

<sup>1</sup> *The History of Human Marriage*, iii. 86 sqq.

peoples who are strictly or almost exclusively monogamous; and I can at least affirm that I am not aware of a single instance in which any such people is reported to treat its women badly. It is true that the position of women may be comparatively good also among peoples who are addicted, and even much addicted, to polygyny; but the case is different with many other peoples who practise it on a large scale.<sup>1</sup> Hence I think we may assume that considerations for the woman's feelings is one cause of monogamy among the lower races, although this consideration itself may be due to circumstances which also in other respects make for monogamy, such as scarcity of women or economic conditions unfavourable to polygyny. And there can be no doubt that the same cause has been operating among civilised nations which prohibit polygyny.

Apart from the general regard for the feelings of women, there are in sexual love itself elements that tend to make men inclined to restrict themselves to one wife, at least for some time. "The sociable interest", says Bain, "is by its nature diffused: even the maternal feeling admits of plurality of objects; revenge does not desire to have but one victim; the love of domination needs many subjects; but the greatest intensity of love limits the regards to one". The beloved person acquires in the imagination of the lover an immeasurable superiority over all others. "The beginnings of a special affection turn upon a small difference of liking; but such differences are easily exaggerated; the feeling and the estimate acting and re-acting, till the distinction becomes altogether transcendent".<sup>2</sup> The absorbing passion for one is not confined to mankind. Hermann Müller,<sup>3</sup> Brehm,<sup>4</sup> and other good observers have shown

<sup>1</sup> *The History of Human Marriage*, iii. 97 sqq.

<sup>2</sup> A. Bain, *The Emotions and the Will* (London, 1880), p. 136 sq.

<sup>3</sup> H. Müller, *Am Neste* (Berlin, [1881]), p. 102.

<sup>4</sup> A. E. Brehm, *Bird-Life* (London, 1874), pt. iv. ch. ii.



that it is experienced by birds. Darwin found it among certain domesticated mammals.<sup>1</sup> It has been noticed that even in a generally polygynous species of monkeys, the Hamadryas baboon, the male may care for one female only, once she has become a mother, and for their common offspring, taking no notice of other females.<sup>2</sup> Tinklepaugh describes a case of "monogamous attachment" on the part of a young Rhesus monkey, called "Cupid", living in the Psychological Laboratory of the University of California, to a female common macaque much older than himself, called "Psyche", that had sexually initiated him. When, two and a half years after their first meeting, two young female Rhesus monkeys were introduced into the laboratory, Cupid proved very antagonistic to their intrusion. On five successive occasions when they were introduced into his cage, after Psyche had been previously removed, he attacked them, even though he had been sexually starved for two or three weeks before three of these incidents; and when Psyche was returned he continued to manifest a strong sexual interest in her.<sup>3</sup> In mankind the absorbing passion for one is found not only in civilised but also in savage men and women. Suicide from unsuccessful or disappointed love is by no means infrequent among them, and although apparently more common in women it also occurs in men.<sup>4</sup> But although the absorbing character of his love prevents a man for some time from taking another wife, it does not necessarily prevent his doing so for long. His love of one may be suppressed by his desire for change. As

<sup>1</sup> C. Darwin, *The Descent of Man*, ii. (London, 1888), p. 293 *sqq.*

<sup>2</sup> A. E. Brehm, *Tierleben*, xiii. (Leipzig, 1920), p. 571.

<sup>3</sup> O. L. Tinklepaugh, 'The Self-Mutilation of a Male *Macacus rhesus* Monkey', in *Journal of Mammalogy*, ix. (Baltimore, 1928), p. 293 *sqq.*, quoted by S. Zuckerman, *The Social Life of Monkeys and Apes* (London, 1932), p. 306 *sqq.*

<sup>4</sup> *The History of Human Marriage*, iii. 102 *sq.*

Bernard Shaw remarked, "even those who say there is only one man or woman in the world for them, find that it is not always the same man or woman".<sup>1</sup>

As pointed out above, the man's taste for variety in sex experience is more intense than the woman's, and this has led to the often repeated statement that he is instinctively polygynous.<sup>2</sup> "Man", says Dr. Robinson, "is a strongly polygamous or varietist animal. . . . To a greater percentage of men a strictly monogamous life is either irksome, painful, disagreeable or an utter impossibility. . . . A man may love a woman deeply and sincerely and at the same time make love to another woman, or have sexual relations with her or even with prostitutes. It is quite a *common* thing with men".<sup>3</sup> Michels writes that "although for a short time, or even for considerable periods, a man's sexual affections may appear to assume an exclusive and monogamic form, it is Nature's will that the normal male should feel a continuous and powerful sexual sympathy towards a considerable number of women. . . . We regard it as beyond doubt that there is no man, of whatever degree of virtue, who has not, at least in imagination, or in dream life, possessed more women than one. Attention has been drawn to this fact by an unending series of writers, both of scientific treatises and of belletristic literature. . . . In the male, the stimuli capable of arousing sexual excitement (this term is not to be

<sup>1</sup> G. B. Shaw, *Getting Married* (London, 1913), p. 153.

<sup>2</sup> A. Schopenhauer, *Die Welt als Wille und Vorstellung*, ii. (*Sämmtliche Werke*, iii. [Leipzig, 1916]), p. 620 *sq.*; R. von Krafft-Ebing, *Psychopathia Sexualis* (Stuttgart, 1903), p. 14; A. Forel, *Sexuelle Ethik* (München, 1906), p. 19; Von Ehrenfels, *Sexualethik*, p. 13; E. H. Kisch, *Die sexuelle Untreue der Frau*, i. (Bonn, 1918), p. 83; J. Collins, *The Doctor Looks at Love and Life* (London, 1926), p. 53; B. B. Lindsey and Wainwright Evans, *The Revolt of Modern Youth* (New York, etc., 1928), p. 192.

<sup>3</sup> W. J. Robinson, *Woman Her Sex and Love Life* (New York, 1923), p. 325 *sq.*



understood here in the grossly physical sense) are so extraordinarily manifold, so widely differentiated, that it is quite impossible for one single woman to possess them all".<sup>1</sup>

The question has often been raised whether it is possible for any one to be simultaneously in love with several individuals—which would be the truly polygamous form of the sexual instinct—and it has been answered in the affirmative.<sup>2</sup> Iwan Bloch observes that it is "the extraordinary manifold differentiation of modern civilised humanity that gives rise to the possibility of such a simultaneous love for two individuals. . . . It is difficult always to find the corresponding complements in one single individual".<sup>3</sup> Dr. Hamilton asserts that one of the contentions of the younger generation of spouses about which he heard a good deal during his studies of one hundred married men and one hundred married women "was to the effect that for a married person to have an extra-marital love affair need not necessarily imply dissatisfaction with the spouse: that, on the contrary, it may even enrich the lives of a husband and wife if each can have an 'outside' affair about which there shall be no cheating or secrecy". All of the extra-marital love affairs recorded by him, however, did not involve sexual intercourse.<sup>4</sup> Dr. Robinson also says that, in the opinion of advanced sexologists, one love, instead of excluding another, may even intensify the other love.<sup>5</sup> Max Nordau holds that we can actually love several individuals at the same time with nearly equal tenderness, and that we need not lie

<sup>1</sup> R. Michels, *Sexual Ethics* (London & Felling-on-Tyne, 1914), p. 223 sq.

<sup>2</sup> G. Hirth, *Wege zur Heimat* (München, 1909), p. 542 sqq.; R. De Pomerai, *Marriage Past Present and Future* (London, 1930), p. 340.

<sup>3</sup> I. Bloch, *The Sexual Life of Our Time* (London, 1908), p. 206.

<sup>4</sup> Hamilton, *op. cit.* p. 225.

<sup>5</sup> Robinson, *op. cit.* p. 383 sq.

when we assure each one of our passion.<sup>1</sup> Van de Velde is much more cautious. He writes: "I must admit that psychic complexes, to which we dare not deny the proud name of love, because of their depth, their permanence, their variety and delicacy of emotion, may be, in exceptional cases, directed towards more than one object at the same time; nevertheless, I consider the essentially monogamous stamp of a highly evolved love . . . as established beyond all doubt. So long as any one loves ardently with both soul and senses, the mind is so pervaded by the image of the beloved, that the lover remains monogamous in essentials".<sup>2</sup> "The love of two", says Stekel, "is no genuine love".<sup>3</sup>

Nordau, however, admits that the polygamous tendencies may be overcome. His argument contains certain points that may make it worthy to be quoted in full length. "Human love", he says, "although principally nothing more than the impulse for the possession of a certain individual with the purpose of reproduction, is yet something more; it is an enjoyment of the intellectual qualities of the beloved being; it is also friendship. This element of love survives its physiological element. Certain it is, that the sentiment felt for the loved one is not the same after possession as it was before. But it is a profound and powerful sentiment still, sufficient to form the foundation for the desire and even for the necessity of a lifelong union, whose justification is no longer the natural aim of marriage—reproduction—but the want experienced by an intellectually more highly developed individual for companionship with one of similar culture. Even in the most constant hearts, even when the original passion

<sup>1</sup> M. Nordau, *Conventional Lies of Our Civilization* (London, 1895), p. 296.

<sup>2</sup> Th. H. van de Velde, *Ideal Marriage* (London, 1928), p. 16 sq.

<sup>3</sup> W. Stekel, *Die Geschlechtskälte der Frau* (Berlin & Wien, 1927), p. 478.



was the most violent conceivable, love undergoes this transformation after the honeymoon or after the birth of the first child; it is still far from considering the yoke of matrimony a burden, but yet it is by no means a perfectly safe protection against the outbreak of a new passion. But there are other circumstances which aid the will in the struggle with the polygamous instinct. When the union of two persons, who gave evidence of their natures being harmoniously attuned to each other to a certain degree, by loving for a brief period, has lasted a while it becomes a habit, which sustains fidelity most wonderfully. They perhaps, after a time, cease to experience the slightest love or even friendship for each other, but their companionship is still kept up, and kept up as a matter of course. . . . If the union is blessed with children the tenderness of the parents is diverted to them, and a new love springs up in their hearts which twines around both parents and unites them once more, as a vine joins two neighbouring trees together with its luxuriant growth and covers them with foliage and blossoms, although they may be already dead and rotten at the core. Moreover, as the years pass the impulse to love grows weaker, from natural causes, and even if the germs of new attractions do not die out or vanish, it becomes easier every year for the will and judgment to prevent their development. There remains finally after the dawn of love has passed away, a sweet and deep memory of it through the remaining hours of the day of life, which produces a sensation of gratitude to the one loved once so dearly, and impels the two hearts to cling to each other still. On account of all these reasons it may be practicable to mate human beings monogamically for life, even if their disposition of mind or body seems to indicate that they were principally destined to a number of contemporaneous or succeeding relations. There will, however, always be numerous cases in which nothing can prevent the

outbreak of a new passion ".<sup>1</sup> Balzac writes: " It is as absurd to pretend that it is impossible to love the same woman always, as to say that a great artist needs several violins to execute a piece of music to perfection ".<sup>2</sup>

The absorbing passion for one may be supposed to have become more pronounced in the course of civilisation owing to the increasing importance of the spiritual element in love; but at the same time the greater differentiation and multiplicity of sexual stimuli have also increased the power of its great rival, the desire for variety. Married people belonging to the uncultured classes are evidently much less troubled by it than educated persons: the main thing for them is to have an opportunity to gratify their sexual appetite. It is not to be expected, then, that the conflict between those competing forces will become less serious in the future. But this does not imply that if polygyny were legalised, any considerable number of men would indulge in it. It is a curious freak on the part of Bernard Shaw to say that as polygyny would enable the best men to monopolise all the women, a great many men would be condemned to celibacy.<sup>3</sup> Apart from other reasons, economic considerations, fear of domestic troubles, and the difficulty of finding a woman who would care to share her married life with a fellow-wife, would prevent men from taking advantage of the new right granted them. The experience gained from peoples who permit polygyny teaches us that generally only a small minority of the men practise it. In the Mohammedan world, for instance, the large majority of men live in monogamy.<sup>4</sup> In Persia, according to Colonel Macgregor, only 2 per cent. have a plurality of wives.<sup>5</sup>

<sup>1</sup> Nordau, *op. cit.* p. 301 *sqq.*

<sup>2</sup> H. de Balzac, *Physiologie du mariage*, Méditation v.

<sup>3</sup> Shaw, *op. cit.* p. 138 *sq.*

<sup>4</sup> *The History of Human Marriage*, iii. 25, 43.

<sup>5</sup> Ameer Ali, *Mahommedan Law*, ii. (Calcutta, 1908), p. 25. See also J. E. Polak, *Persien*, i. (Leipzig, 1865), p. 209.



Among the Mohammedans of India, according to a report from 1907, there are 1021 wives to every 1000 husbands, so that, even if no husbands have more than two wives, all but 21 per thousand must be monogamous.<sup>1</sup>

We may assume, then, that there would be little to be gained by legalising polygyny. On the other hand, any proposal to that effect would undoubtedly be rejected, not only as being generally unwanted by the men, but also as being degrading to the women and contrary to public feelings. Numerous facts show that advancement in civilisation has been adverse to polygyny. Even among the Mohammedans many of the educated classes regard it with "disapprobation amounting almost to disgust", in spite of the sanction given it by the Koran.<sup>2</sup> A growing section of Islamists, particularly among the Mutazalas, consider it positively unlawful, emphasising the fact that the clause in the Koran which contains the permission to contract four contemporaneous marriages is immediately followed by the sentence, "And if ye fear that ye cannot be equitable, then [marry] only one". It is argued that as it is impossible for all ordinary men who have a plurality of wives to be quite impartial to each wife, monogamy must be considered the law for them.<sup>3</sup> In China the best feelings of the nation are said to be at heart against the practice of having, besides the legal principal wife, so-called wives "by courtesy" or lawful concubines.<sup>4</sup> In Japan concubinage of the Chinese type was abolished as a legal institution with the promulgation of the Criminal Code of 1880.<sup>5</sup> Although Hindu law places

<sup>1</sup> *The Imperial Gazetteer of India*, i. (Oxford, 1907), p. 482.

<sup>2</sup> Ameer Ali, *op. cit.* ii. 24 sq.

<sup>3</sup> *Ibid.* ii. 24; T. L. Pennell, *Among the Wild Tribes of the Afghan Frontier* (London, 1909), p. 195.

<sup>4</sup> J. Dyer Ball, *The Chinese at Home* (London, 1911), p. 47.

<sup>5</sup> Nobushige Hozumi, *Ancestor - Worship and Japanese Law* (Tokyo, etc., 1913), p. 142.

no restriction upon polygyny, most castes object at the present day to their members having more than one wife, except for special reasons, such as the failure of the first wife to bear a son, or her affliction with some incurable disease or infirmity; and in such cases the consent of the caste *panchayat* must generally be obtained before a man marries again.<sup>1</sup> "Public opinion", says Sir P. S. Sivaswamy Aiyer, "has been steadily undergoing a change in favour of monogamy as the result of education, economic pressure and recognition of the just claims of women".<sup>2</sup>

In Europe obligatory monogamy is a time-honoured institution: it was not first introduced by Christianity. Roman marriage was monogamous. Liaisons between married men and mistresses were not uncommon by the close of the Republic,<sup>3</sup> but a relation of that kind was not considered lawful concubinage in after times; according to Paulus, a man who had a wife (*uxor*) could not have a concubine (*concubina*) at the same time.<sup>4</sup> There can be little doubt that monogamy was the only recognised form of marriage in Greece: a second marriage seems to have presupposed the dissolution of the first, or at all events to have given the first wife the right to dissolve her marriage.<sup>5</sup> Concubinage, however, existed at Athens at all times, and was hardly censured by public opinion.<sup>6</sup> But it was well distinguished from marriage: it conferred no rights on the

<sup>1</sup> E. A. Gait, *Census of India*, 1911, i. (India) Report (Calcutta, 1913), p. 246.

<sup>2</sup> P. S. Sivaswamy Aiyer, *Evolution of Hindu Moral Ideas* (Calcutta, 1935), p. 25.

<sup>3</sup> Cicero, *De oratore*, i. 40, § 183.

<sup>4</sup> *Digesta*, i. 16. 144.

<sup>5</sup> L. Beauchet, *Histoire du droit privé de la République Athénienne*, i. (Paris, 1897), p. 41 *sqq.*; U. von Wilamowitz-Moellendorff and B. Niese, *Staat und Gesellschaft der Griechen und Römer* (Berlin, 1910), p. 34.

<sup>6</sup> Cf. *Oratio in Neæram*, in Demosthenes, *Opera* (Parisiis, 1843), 1386.



concubine, and the children were "bastards".<sup>1</sup> Polygyny occurred among the ancient Slavs, but generally, it seems, only chiefs and nobles were addicted to it.<sup>2</sup> Among the West Germans, according to Tacitus, only a few persons of noble birth had more than one wife.<sup>3</sup> Among the Anglo-Saxons there is no direct evidence of polygyny, but it cannot have been entirely unknown among them, as it is prohibited in some of their law-books.<sup>4</sup> The general custom among the ancient Irish was to have one wife, but we sometimes find a king or chief with two.<sup>5</sup> It has been assumed that polygyny occurred in ancient Gaul;<sup>6</sup> but this assumption is based on a probable misinterpretation of the word *uxores* in a statement made by Caesar,<sup>7</sup> where this plural seems to be simply due to the plural *virī*.<sup>8</sup> The laws of ancient Wales did not permit polygyny.<sup>9</sup> The trend of marriage in pre-Christian Europe has thus been distinctly monogamous. It would be strange if polygyny were introduced in the future—even for "kings" and "nobles". Up to recent times it was considered a

<sup>1</sup> Beauchet, *op. cit.* i. 82 *sqq.*; E. Hruza, *Beiträge zur Geschichte des griechischen und römischen Familienrechtes*, ii. (Erlangen & Leipzig, 1894), pp. 66, 70 *sqq.*

<sup>2</sup> G. Krek, *Einleitung in die slavische Literaturgeschichte* (Graz, 1887), p. 361 *sq.*; W. A. Maciejowski, *Slavische Rechtsgeschichte*, ii. (Stuttgart & Leipzig, 1836), p. 191 *sqq.*

<sup>3</sup> Tacitus, *Germania*, ch. 18.

<sup>4</sup> *Laws of Ethelred*, vi. 12; *Laws of Cnut*, i. 7; *Law of the Northumbrian Priests*, 61 (in *Ancient Laws and Institutes of England* [London, 1840]). Cf. F. Roeder, *Die Familie bei den Angelsachsen* (Halle a. S., 1899), p. 79.

<sup>5</sup> P. W. Joyce, *A Social History of Ancient Ireland*, ii. (London, 1903), p. 7.

<sup>6</sup> d'Arbois de Jubainville, *op. cit.* vi. 291; O. Schrader, *Reallexikon der indogermanischen Altertumskunde* (Strassburg, 1901), p. 635.

<sup>7</sup> Caesar, *De bello gallico*, vi. 19. 3.

<sup>8</sup> Cf. C. Jullian, *Histoire de la Gaule*, ii. (Paris, 1908), p. 635.

<sup>9</sup> J. Rhys and D. Brynmor-Jones, *The Welsh People* (London, 1906), p. 210.

matter of course for a king or ruling prince to have, besides his wife, a concubine, whom he could change at will, nay also for a happily married one to have a *maîtresse en titre*;<sup>1</sup> but even this praxis can hardly be expected to be revived in the shape of a legal institution.

While the man is said to be polygamous by nature, the woman is often said to be monogamous or predominantly so.<sup>2</sup> Dr. Grete Meisel-Hess remarks that “in the male satiety ensues as soon as he has gained the goal of his desire. He wishes to pass on in search of fresh sexual experiences, whereas the woman who has given herself to a man clings for this reason all the more firmly to him”.<sup>3</sup> According to Forel, woman is generally much more particular than man in giving her love: while the normal man is as a rule attracted to coitus by nearly every more or less young and healthy woman, this is by no means the case in the normal woman with regard to man. She is also much more constant than man from the sexual point of view, and it is rarely possible for her to experience sexual desire for several men at once.<sup>4</sup> Georg Hirth is of the same opinion.<sup>5</sup> Of 324 female students at the University of Moscow 31 thought it possible to love two men at the same time.<sup>6</sup> Kisch says that “the young sexual conqueror is thinking of women, the sexually ripening girl of *the* man”; and he attributes the predominantly

<sup>1</sup> F. E. Traumann, ‘Konkubinat und Rechtsordnung’, in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xvi. (Berlin & Köln, 1929), p. 43 sq.

<sup>2</sup> Schopenhauer, *op. cit.* ii. 621; Von Krafft-Ebing, *op. cit.* p. 14; Lindsey and Evans, *op. cit.* p. 191; Robinson, *op. cit.* p. 325 sq.; Collins, *op. cit.* p. 53; L. Loewenfeld, *On Conjugal Happiness* (London, 1912), p. 169.

<sup>3</sup> Grete Meisel-Hess, *The Sexual Crisis* (New York, 1917), p. 64.

<sup>4</sup> A. Forel, *Die Sexuelle Frage* (München, 1931), p. 122.

<sup>5</sup> Hirth, *op. cit.* p. 544.

<sup>6</sup> S. Weissenberg, ‘Das Geschlechtsleben der russischen Studentinnen’, in *Zeitschrift für Sexualwissenschaft*, xi. (Bonn, 1924), p. 11.



monogamous character of woman's love to the commanding strength of its spiritual elements.<sup>1</sup> Johanna Elberskirchen writes of her own sex: "We do not long only for the rude sexual act. We spiritualise it—at least some of us do so; at any rate we individualise it. It is one particular man whom we desire, he alone can still our longing, our bodily and mental hunger for love".<sup>2</sup> Even the prostitute has generally her special fancy man.<sup>3</sup>

At the same time, the opinion that woman is by nature considerably more monogamous than man has been contradicted. Judge Bartlett writes: "The important trend we see in the modern divorce court, and even out of it, is the revelation that women are little, if any, more monogamous than men".<sup>4</sup> Dr. Friedlaender maintains that, in this respect, there is no difference between the sexes; that if men and women have found a partner who completely satisfy them spiritually and bodily, they are absolutely monogamous, whereas in the contrary case they are polygamous; and that the apparently weaker desire for variety in women is largely due to the greater restraints to which they are subjected.<sup>5</sup> Mr. Calverton thinks that woman is more monogamous than man only when the social system makes such a relationship on her part imperative, and that under a convention in the coming society, which permits equal freedom for both sexes, women will be no less polygamous than men.<sup>6</sup> Of the married women studying

<sup>1</sup> Kisch, *op. cit.* i. 79, 83 sq.

<sup>2</sup> Johanna Elberskirchen, quoted by *idem*, *The Sexual Life of Woman* (London, s.d.), p. 173.

<sup>3</sup> W. Liepmann, *Psychologie der Frau* (Berlin & Wien, 1920), p. 166; Forel, *Die Sexuelle Frage*, p. 123.

<sup>4</sup> G. A. Bartlett, *Men, Women and Conflict* (New York & London, 1931), p. 159.

<sup>5</sup> K. F. Friedlaender, *Die Impotenz des Weibes* (Leipzig, 1921), p. 8.

<sup>6</sup> Calverton, *op. cit.* p. 307 sq.

at the University of Kazan whose sexual life was investigated by means of questionnaires, 30 per cent. admitted that they practised extra-matrimonial sexual intercourse.<sup>1</sup> Dr. Hamilton's question, "Do you believe that you would derive greater sex pleasure from intercourse with any other man than your husband?" was answered in the negative by 48 of his group of one hundred married women and in the affirmative by 19;<sup>2</sup> and 24 of the women had committed adultery.<sup>3</sup> But it seemed to him that "the majority of the young wives who had indulged in adulterous sex relations had done so more out of loyalty to a belief in spousal sex freedom than in response to anything suggestive of an overwhelming sex urge"; the younger generation, he says, is displaying a considerable interest in the theory that marriage need not be monogamous in order to be successful.<sup>4</sup> Another American writer thinks that the attacks of individualism on the monogamic family probably need not be taken too seriously. "Already", says Dr. Goodsell, "there are signs that young women are moving from theories (and, in some instances, practices) of sexual individualism to a belief in the desirability of permanent marriage, homes that endure and children upon whom the interests and plans of parents may focus. Having swung far toward undisciplined freedom, the pendulum appears to be swinging back toward a modified form of mid-Victorianism. Ample evidence exists in the statements of young college women to the effect that marriage, home-making and children are experiences that they sincerely desire and do not intend to lose".<sup>5</sup>

<sup>1</sup> S. Weissenberg, 'Weiteres über das Geschlechtsleben der russischen Studentinnen', in *Zeitschrift für Sexualwissenschaft*, xii. (Bonn, 1925), p. 176.

<sup>2</sup> Hamilton, *op. cit.* p. 164.

<sup>3</sup> *Ibid.* p. 541.

<sup>4</sup> *Ibid.* p. 540.

<sup>5</sup> W. Goodsell, *A History of Marriage and the Family* (New York, 1934), p. 530. Cf. Lorine Pruette, in Ira S. Wile, *The Sex Life of the Unmarried Adult* (London, 1935), p. 301.



In any case the desire for variety is not absent in women, whatever its strength may be; and there are even women who apparently need more than one man to make life reasonably happy for them. It may be said that from a purely physical point of view woman is, in a way, more polygamous than man: although her sexual energy is aroused more slowly and with more difficulty than man's, it is more enduring, and the act of sexual intercourse which exhausts his capacity may have only served to arouse her ardour. "At the best", says Vatsayana, "a man can please only one woman physically, mentally, and spiritually; therefore, the man who enters into marriage relations with more than one woman, voluntarily courts unhappiness and misery".<sup>1</sup> On the other hand a woman could easily sexually satisfy several husbands.<sup>2</sup> Nevertheless, the suggestion that in the future polyandry will be recognised among ourselves as a form of marriage<sup>3</sup> needs no serious consideration. In the countries where it is found it owes its origin to circumstances which cannot be supposed to recur in modern civilisation.<sup>4</sup> It is true that in certain parts of Europe cicisbeism has existed as a recognised custom in comparatively modern times. We are told that formerly a Florentine girl of good family, by a clause in the nuptial contract, claimed her right to take a lover whenever it should please her to do so.<sup>5</sup> Lady Montagu, who visited the Court of Vienna in 1716, writes that it is there "the established custom for every lady to have two husbands, one that bears the name, and another that performs the duties. And these engagements are so well known, that it would be a

<sup>1</sup> Vatsayana, *The Kama Sutra* (Amritsar, 1930), p. 195.

<sup>2</sup> Cf. M. Vaerting 'Die monogame Veranlagung des Mannes', in *Zeitschrift für Sexualwissenschaft*, iii. (Bonn, 1917), p. 245 *sqq.*; Ellis, *op. cit.* vi. 537.

<sup>3</sup> *Supra*, p. 177 *sq.*

<sup>4</sup> See *The History of Human Marriage*, vol. iii. ch. xxx.

<sup>5</sup> E. Reclus, *Primitive Folk* (London, *s.d.*), p. 66.

downright affront, and publicly resented, if you invited a woman of quality to dinner, without at the same time inviting her two attendants of lover and husband, between whom she always sits in state with great gravity. These sub-marriages generally last twenty years together, and the lady often commands the poor lover's estate even to the utter ruin of his family ". A woman, she adds, " looks out for a lover as soon as she's married, as part of her equipage, without which she could not be genteel ". And the husbands " look upon their wives' gallants as favourably as men do upon their deputies, that take the troublesome part of their business off of their hands; though they have not the less to do; for they are generally deputies in another place themselves ".<sup>1</sup> These customs were of course not polyandry in the proper sense of the term, but merely libertinism peculiar to an aristocratic clique. Even in Soviet Russia, where there is greater sexual freedom than in any other Western country, the " polyandric " women studied by Professor Blonsky<sup>2</sup>—teachers between the ages of thirty and forty who have formed numerous relationships with men, either successively or simultaneously—are generally depreciated and scorned by the very men with whom they form relationships; and they are said to be far from happy in other respects as well.

In speaking of monogamy and polygamy (including both polygyny and polyandry) I have uniformly used those terms for legally recognised forms of marriage—independently of the durability of the union—not for other sexual relationships between one man and one woman or between one man and several women or

<sup>1</sup> Lady Mary Wortley Montagu, *The Letters and Works of*, i. (London, 1861), p. 244 sq.

<sup>2</sup> P. Petrowitsch Blonsky, ' Zur Psychologie der monandrischen und der polyandrischen Frau in der modernen Kultur ', in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xvii. (Berlin & Köln, 1930), p. 1 sqq.



between one woman and several men. Like myself, Dr. Ellis maintains that no radical modification of the existing monogamic order is to be expected, but he thinks that we may "reasonably expect in the future a slow though steady increase in the recognition, and even extension, of those variations of the monogamic order which have, in reality, never ceased to exist". He then means by the question of sexual variations "not a question of introducing an entirely new form of marriage, but only of recognising the rights of individuals, in exceptional cases, to adopt such aberrant forms, and of recognising the corresponding duties of such individuals to accept the responsibilities of any aberrant marriage forms they may find it best to adopt".<sup>1</sup> It seems to me very likely that this prediction will come true: that in questions of sex people will be less tied by conventional rules and more willing to judge each case on its merits, and that they will recognise greater freedom for men and women to mould their own amatory life. But so far as "aberrant marriage forms" are concerned, I very much doubt that the recognition will be a legal one. In England they are tolerated by the law to the extent of not being punishable in the ordinary sense of the term, but adultery is a legal ground of divorce. The husband's liberty was restricted in this way not many years ago; and I do not consider it probable that the law in the future will give greater freedom either to an aberrant husband or an aberrant wife by preventing the other party's escape from the bonds of matrimony. I shall revert to this subject in the following chapter.

<sup>1</sup> Ellis, *op. cit.* vi. 502.

## CHAPTER X

### DIVORCE

THE uniformity of Western legislation with regard to monogamy as the only recognised kind of matrimony contrasts sharply with the extraordinary variability of its attitudes towards the dissolubility of marriage. The extremes in this respect are on the one hand the total prohibition of divorce in countries following the canon law of the Roman Catholic Church, and on the other hand the provision of the Soviet law which recognises even the desire of one of the parties as an unconditional ground of divorce.

According to the fully developed Roman Catholic doctrine, a consummated Christian marriage is a sacrament and must as such remain valid for ever. It represents the union between Christ and the Church, and is consequently as indissoluble as that union. It is also permanent according to the law of nature, because only as permanent can marriage fulfil its object. And God made it so at the very beginning of our race, when He decreed that a man shall leave his father and his mother and shall cleave to his wife, and they shall be one flesh. Yet in spite of the theory of the indissolubility of Christian marriage, the Roman Catholic doctrine gives ecclesiastics a large practical power of dissolving marriages which may have appeared perfectly valid. The Church recognised a legal process which was popularly, though incorrectly, called a divorce *a vinculo matrimonii*, “from the bond of matrimony”, in case the union had been unlawful from the beginning on



the ground of some canonical impediment, such as relationship or earlier engagement of marriage. This only implied that a marriage which never had been valid would remain invalid; but practically it led to the possibility of dissolving marriages which in theory were indissoluble. For, as Lord Bryce observes, "the rules regarding impediments were so numerous and so intricate that it was easy, given a sufficient motive, whether political or pecuniary, to discover some ground for declaring almost any marriage invalid".<sup>1</sup> A man might slip out of matrimonial bondage by swearing that he was his wife's distant cousin, or had loved her sister in his youth, or had before his marriage stood godfather to one of her near spiritual kindred.

For a long time, however, the doctrine of the Western Church was not accepted in full by the legislators. The Christian emperors laid down certain grounds on which a husband could divorce his wife and a wife her husband without blame; and the possibility of divorce remained in the Roman codes of the German kings. But since the days of Charlemagne the canonical doctrine of the indissolubility of marriage entered the secular legislation of German peoples, and in the tenth century the ecclesiastical rules and courts gained exclusive control of this branch of law in Germany. At a somewhat earlier date the provisions of the Roman law had been superseded by new rules enforced by the Church in the regions where the imperial law had been observed.<sup>2</sup> For many centuries afterwards divorce was not permitted by law in any Roman Catholic country, until it was introduced in France in 1792. At the Restoration in 1816 it was abolished there, but was re-enacted by a law of 1884. In the course of the nineteenth century

<sup>1</sup> Lord Bryce, *Studies in History and Jurisprudence*, ii. (Oxford, 1901), p. 434.

<sup>2</sup> E. Westermarck, *The History of Human Marriage*, iii. (London, 1921), p. 328 *sqq.*

and during the present one it was made legal in various Roman Catholic countries, also in the case of marriage between Catholics. In the United States South Carolina stands alone in granting no divorces whatsoever, which is the more remarkable as no state has fewer Roman Catholic citizens. It is the only Protestant community in the world which nowadays holds marriage indissoluble.<sup>1</sup>

The canonical doctrines that marriage is a sacrament and that it is indissoluble save by death were rejected by the Reformers. As said above in the discussion of adultery, they all agreed that this offence should be a ground of divorce, and most of them regarded malicious desertion as a second legitimate cause for the dissolution of marriage. The latter opinion was based on St. Paul's dictum that a Christian married to an unbeliever "is not under bondage" if the unbeliever depart, which was broadened by Luther so as to include malicious desertion even without a religious motive. The same reformer admitted that the worldly authorities might allow divorce also on other strong grounds, and mentioned himself obstinate refusal of conjugal intercourse as sufficient cause for it. Several reformers went farther than Luther; but the Fathers of English Protestantism as a body were more conservative than those of the Continent.<sup>2</sup>

Desertion, or "malicious" desertion, or desertion "without just cause or excuse", is very frequently mentioned as a ground of divorce by modern law-books, especially Protestant ones. In Germany the term of desertion must be at least one year; in other countries two or three or even five years. But desertion may be a ground of divorce even when it is not expressly mentioned as such by the law, as in France and Belgium, in so far as it may be regarded as an *injure grave* justifying

<sup>1</sup> *The History of Human Marriage*, iii. 339 sqq.    <sup>2</sup> *Ibid.* iii. 334 sq.



dissolution of the marriage. In the laws of various countries attempt on the life of one spouse by the other is specified as a ground on which a divorce may be obtained; and in most countries in which divorce is allowed ill-treatment of some kind is a sufficient reason for it. In almost all of the commonwealths of the United States "divorce"—generally "from the bond of matrimony", but in some of them "from bed and board" only—is obtainable for cruelty. The degree of cruelty necessary is usually actual and repeated violence endangering life, limb, or health, or giving reasonable grounds to apprehend such danger; but some jurisdictions add to this intolerable indignities to the person, public and false accusations of adultery, habitual manifestations of hatred, or violent and ungovernable temper. An extremely frequent ground of divorce is the condemnation of one of the parties to a certain punishment or his or her being convicted of a certain crime. The German code speaks neither of punishment nor of crime, but regards dishonourable or immoral conduct generally as a "relative" ground of divorce, which implies that it is left to judicial discretion whether in the special circumstances of the case divorce ought to be granted.

There are yet some particular offences that are mentioned in some law-books as causes for divorce. In the United States a husband who is able to support his wife, but for a certain time neglects to do so, may, according to many jurisdictions, be divorced on that account; and according to an even greater number, divorce may be obtained on proof of the habitual drunkenness of either party for varying terms. In North Carolina a husband may obtain a divorce if his wife has without good reason refused sexual intercourse to him for the space of twelve months. The refusal of sexual intercourse was a ground of divorce according to various German law-books previous to the imperial

code, and, though not specially mentioned in that code, it is considered to be included among the "relative" grounds of divorce. In England the mere wilful refusal of a wife to submit to her husband's embraces is not *per se* a ground for annulling a marriage, but if she refuses to submit to inspection the court will presume her impotence, being averse to a husband using excessive force; and so also, if a husband refuses to consummate his marriage, the court may draw the inference that such refusal arises from impotence and may annul the marriage.

Besides offences of some kind or other committed by either husband or wife and entitling the other party to demand a dissolution of the marriage there are other circumstances recognised as grounds of divorce, which may or may not involve guilt in one of the parties, but in all cases are supposed to make marriage a burden for the other spouse. Impotence in the husband or wife, existing at the time of marriage and afterwards, but unknown to the other party, is specially mentioned as a cause of divorce in some law-books. In England it has long been a ground for pronouncing an otherwise valid marriage invalid; and in the United States also divorce is commonly granted for incurable physical incapacity if the plaintiff was ignorant of the defendant's condition. Other grounds of divorce, according to many law-books, are contagious venereal or certain other diseases, and insanity which existed at the time of marriage or prior to it without the knowledge of the other party, or insanity which has been pronounced incurable or gives no reasonable hope of recovery after three or sometimes five years' duration.<sup>1</sup>

These are the most general grounds of divorce laid down in modern law-books. English law is the only one in Europe that recognises none but sexual reasons

<sup>1</sup> *The History of Human Marriage*, iii. 344 sqq.



either for the dissolution or the annulment of marriage. The Majority Report of the Royal Commission of 1909 recommended that divorce should, in the future, be obtainable for the following reasons: adultery; wilful desertion for three years and upwards; cruelty; incurable insanity after five years' confinement; habitual drunkenness found to be incurable from the first order for separation; and imprisonment under commuted sentence of death.<sup>1</sup> These recommendations were deprecated by the Minority Report, which declared, on the one hand, that there was no public demand for any such concessions, and on the other hand, that, as the experience of other countries proved, the granting of the concession was invariably followed by a sudden and serious increase in the number of demands for divorce.<sup>2</sup> The recommendations of the Majority Report have hitherto been ignored, with the exception of the proposal that in the case of adultery women should be placed on an equality with men.<sup>3</sup>

Legislators are still imbued with the idea that a marriage must inevitably end in a catastrophe, either by the death or some great misfortune of one of the consorts or by the commission of a criminal or immoral act, which is evidently regarded as a more proper ground or excuse for dissolving the marriage than the mutual agreement of both. Yet divorce by mutual consent is very ancient in European legislation. According to Roman law a "free" marriage, which implied that the wife did not fall under the *manus* of her husband, could be dissolved either by mutual agreement between both parties or by the will of one party only; and the rules of divorce which were recognised in the case of a free marriage were afterwards extended to marriages with

<sup>1</sup> *Royal Commission on Divorce and Matrimonial Causes, Report of the Commissioners*, § 329.

<sup>2</sup> *Ibid.*, *Minority Report*.

<sup>3</sup> *Ibid.*, *Report of the Commissioners*, § 219.

*manus*. Divorce by mutual consent was permitted in the Roman Empire even in Christian times. The facility of such divorce remained in the Roman codes of the German kings; and those subjects of the Western rulers who elected to live under the old Teutonic systems of law seem to have had an equal facility. Thus the dooms of Aethelbirht, Christian though they be, suggest that the marriage might be dissolved at the will of both parties or even at the will of one of them.<sup>1</sup> In ancient Ireland separation of married couples might take place either by mutual consent or as the outcome of legal proceedings; and in ancient Wales either husband or wife might, practically, separate whenever one or both chose.<sup>2</sup> In later times, when the Roman Catholic prohibition of divorce of any kind was revoked by the Reformers, mutual consent was not recognised as a legitimate ground for dissolving a marriage. It only reappeared as the result of the fresh impetus to a more liberal legislation which was given in the eighteenth century by the new philosophy with its conceptions of human freedom and natural rights. If marriage is a contract entered into by mutual consent, it seemed natural that it should also be dissolvable if both parties wish to annul the contract. In the Prussian *Project des Corporis Juris Fridericiani* of 1749, "founded on reason and the constitutions of the country", it is admitted that married people may demand with common consent the dissolution of their marriage. The procedure in the affair, however, shall be only gradual. First, endeavours shall be made to reconcile the parties, and, if it be necessary, a clergyman shall be called to give them a suitable exhortation. If these steps prove ineffectual, they shall be separated from bed and board for one year; but if after this period they still persist in their petition and there remain no more hopes of recon-

<sup>1</sup> *The History of Human Marriage*, iii. 321, 322, 332 sq.

<sup>2</sup> *Ibid.* iii. 323 sq.



ciling them, the marriage may be dissolved.<sup>1</sup> The 'Project' never became law; but in practice divorce was freely granted by Frederick II *ex gratia principis* at the common request of husband and wife.<sup>2</sup> In the Prussian 'Landrecht' of 1794 divorce by mutual consent is admitted if the couple have no children and there is no reason to suspect levity, precipitation, or compulsion; and power is given to the judge to dissolve a marriage in cases in which he finds a dislike so strong and deeply rooted that there is no prospect of reconciliation and the marriage consequently will fail to fulfil its aim.<sup>3</sup>

In France the new ideas led to the law on divorce of 20th September 1792, previous to which date the Roman Catholic canon law prevailed. In the preamble of the new law it is said that marriage is merely a civil contract, and that the facility in obtaining divorce is the natural consequence of the individual's right of freedom, which is lost if engagements are made indissoluble.<sup>4</sup> Divorce is granted on various grounds, among others on the mutual desire of the two parties, and even at the wish of one party on the ground of incompatibility of temper, subject only to a short period of delay and to the necessity of appearing before a family council who are to endeavour to arrange the dispute.<sup>5</sup> It was said that divorce was instituted in order to preserve in marriage "cette quiétude heureuse qui rend les sentiments plus vifs".<sup>6</sup> Marriage would no longer be a

<sup>1</sup> *Project des Corporis Juris Fridericiani* (Halle, 1749), i. 2.3.1.35, p. 56.

<sup>2</sup> E. Roguin, *Traité de droit civil comparé: Le mariage* (Paris, 1904), p. 334.

<sup>3</sup> *Allgemeines Landrecht für die Preussischen Staaten* (Berlin, 1828-1832), §§ 716, 718.

<sup>4</sup> *Loi sur le divorce: 20 septembre 1792* (in *Lois civiles intermédiaires*, i. [Paris, 1806], p. 325).

<sup>5</sup> *Ibid.* i. 2 sq.; ii. 1 sqq. (vol. i. 326 sqq.).

<sup>6</sup> H. Taine, *Les Origines de la France contemporaine*, iii. (Paris, 1881), p. 102.

yoke or a chain, but “ l’acquit d’une dette agréable que tout citoyen doit à la patrie. . . . Le divorce est le dieu tutélaire de l’hymen. . . . Libres de se séparer, les époux n’en sont que plus unis ”.<sup>1</sup> The new law was certainly very popular: in the year VI. the number of divorces in Paris exceeded the number of marriages.<sup>2</sup> But six years later, in 1804, the law of 1792 was superseded by the new provisions in Napoleon’s *Code civil des Français*. Divorce was made more difficult. Mere incompatibility of temper is no longer recognised as a cause for it. Marriage may still be dissolved on the ground of mutual consent, but on certain conditions only: the husband must be at least twenty-five years of age and the wife twenty-one; they must have been married for at least two years and not more than twenty years, and the wife must not be over forty-five years of age; the parents or the other living ascendants of both parties must give their approval; and the mutual and unwavering consent of the married couple must sufficiently prove “ that their common life is insupportable to them, and that there exists in reference to them a peremptory cause of divorce ”.<sup>3</sup> When, after the abolition of divorce in France in 1816, it was re-enacted by a law of 1884, the divorce law of the Napoleonic code was again introduced, but with important changes, one of which was that divorce by mutual consent had disappeared.

Nowadays it is allowed in Belgium and Rumania, but is in both countries surrounded by the old barriers of the Code Napoléon,<sup>4</sup> which makes it very rare in practice; it is said that in Rumania only about one

<sup>1</sup> L. Mortimer-Ternaux, *Histoire de la Terreur 1792-1794*, iv. (Paris, 1864), p. 408.

<sup>2</sup> E. Glasson, *Le Mariage civil et le divorce* (Paris, 1880), p. 261.

<sup>3</sup> *Code civil des Français (Code Napoléon)* (Paris, An XII.-1804), arts. 275 *sqq.*, 233.

<sup>4</sup> Belgian *Code civil* (Bruxelles, 1914), arts. 233, 275 *sqq.*; *Codicele civile* (Bucuresci, 1866), arts. 214, 254 *sqq.*



divorce out of a hundred takes place by mutual consent.<sup>1</sup> The civil code of imperial Austria permitted such divorce to Jews<sup>2</sup>—though to no other citizens—in accordance with the principle of Rabbinic law that the court has no right to interfere when both parties declare that their marriage is a failure and they desire to dissolve it.<sup>3</sup> In Mexico the marriage may be dissolved, after the observance of certain formalities, by the mutual agreement of the parties when they have been married for at least a year.<sup>4</sup> In Portugal a divorce may be obtained after a separation *de facto* by mutual consent for ten years.<sup>5</sup> In Wisconsin and one or two other North American states there is the provision that when married parties have voluntarily lived separate five years the court may dissolve the marriage bond, and the interpretation of this provision is that “the separation must be mutual”.<sup>6</sup> In Denmark marriage may be dissolved upon the common application of the parties after living apart for one year and a half,<sup>7</sup> and in Norway<sup>8</sup> and Guatemala<sup>9</sup> after one year’s separation, in accordance with a decree of separation; and such a decree may itself have been obtained by mutual consent.<sup>10</sup> The laws

<sup>1</sup> Roguin, *op. cit.* p. 335 sq.

<sup>2</sup> *Das allgemeine bürgerliche Gesetzbuch für das Kaisertum Oesterreich* (Wien, 1916), § 133.

<sup>3</sup> M. Mielziner, *The Jewish Law of Marriage and Divorce in Ancient and Modern Times* (Cincinnati, 1884), p. 120 sq.

<sup>4</sup> *Ley sobre relaciones familiares* (Paris & México, 1917), arts. 76, 82 sqq.

<sup>5</sup> *Royal Commission on Divorce and Matrimonial Causes. Appendices* (London, 1912), p. 152.

<sup>6</sup> J. P. Bishop, *New Commentaries on Marriage, Divorce, and Separation*, i. (Chicago, 1891), p. 752.

<sup>7</sup> *Lov om Aegteskabs Indgaaelse og Opløsning*, June 30, 1922, vi. 54.

<sup>8</sup> *Lov om ingaaelse og opløsning av egteskap*, May 31, 1918, v. 43.

<sup>9</sup> Roguin, *op. cit.* p. 336.

<sup>10</sup> *Lov om Aegteskabs Indgaaelse og Opløsning*, vi. 52 (Denmark); *Lov om ingaaelse og opløsning av egteskap*, v. 41 (Norway); Roguin, *op. cit.* p. 336 (Guatemala).

of Sweden,<sup>1</sup> Finland,<sup>2</sup> Greece, and Costa Rica<sup>3</sup> admit likewise consensual separation; and a separation may, upon the application of either husband or wife, be converted into a divorce, in Denmark after two years and a half,<sup>4</sup> in Norway,<sup>5</sup> Finland,<sup>6</sup> Greece (apparently), and Costa Rica<sup>7</sup> after two years, and in Sweden after one year.<sup>8</sup> In the Soviet law there are no such restrictions. It goes in fact even further than the French law of 1792 by simply stating that "the grounds for divorce may be either the mutual consent of the parties or the desire of one of them".<sup>9</sup> If the union is not entered in the registry books, men and women part without formalities. If they have "inscribed themselves" all they have to do is "write themselves out", that is, record their separation in the books. The law steps in only when there are children, and then not to hold the family together but to make provision for the children.<sup>10</sup>

In various countries of Eastern civilisation mutual consent is a ground of divorce. In China it was recognised as such even in the old code, which expressly said that, "when the husband and wife do not agree, and both parties are desirous of separation, the law limiting the right of divorce shall not be enforced to prevent it".<sup>11</sup> The Japanese Civil Code promulgated in 1896-1898 recognises two forms of divorce: by mutual agreement and by judicial decree. In order to effect a

<sup>1</sup> *Giftermålsbalk* given *Stockholms slott*, June 11, 1920, xi. 1.

<sup>2</sup> *Aktenslapslag* given *Helsingfors*, June 13, 1929, ii. 76.

<sup>3</sup> Roguin, *op. cit.* p. 334.

<sup>4</sup> *Lov om Aegteskabs Indgaaelse og Opløsning*, vi. 54.

<sup>5</sup> *Lov om ingaaelse og opløsning av egteskap*, v. 43.

<sup>6</sup> *Aktenslapslag* given *Helsingfors*, ii. 76.

<sup>7</sup> Roguin, *op. cit.* p. 342 sq.

<sup>8</sup> *Giftermålsbalk* given *Stockholms slott*, xi. 3.

<sup>9</sup> *Soviet Law of Marriage and the Family*, § 87 (in *Contemporary Review*, cxvii. [London, 1920], p. 574). This clause was not affected by the subsequent revision of the law.

<sup>10</sup> M. Hindus, *Humanity Uprooted* (London, etc., 1929), p. 115 sq.

<sup>11</sup> *Ta Tsing Leu Lee* (London, 1810), sec. cxvi. p. 120.



divorce by mutual agreement, however, a person who has not yet reached the age of twenty-five years must obtain the consent of those persons whose consent would be necessary for his or her contracting a marriage. The latter form of legal divorce, which requires an act of the court upon the contested request of one of the parties, must be for some one of certain causes recognised by law.<sup>1</sup> Among certain low castes in the north of India and among many castes, both high and low, in the south, the orthodox Hindu law of divorce is more or less disregarded, usage having superseded texts. Agreeably to such usage, the granting of a divorce, or the recognition of a divorce as one properly made, is the duty of the caste. In some cases the mere will of either party or of both parties suffices, and there the caste can do very little, except to accept what has been done; and where it is allowed by custom, a divorce by mutual agreement is also recognised by law. Among the Buddhists of Burma marriage can be annulled by either side without much difficulty, and may always be dissolved by the consent of the parties. In Siam mutual consent is likewise a good and valid ground of divorce.<sup>2</sup>

The grounds on which divorce may be obtained according to the existing laws of those European and American states in which it is permitted belong to a branch of legislation which has of late been subjected to so many changes that I may have been unable to keep pace with all of them, and some of my statements, though derived from the best sources available to me, may possibly have become antiquated in the course of the last few years. In any case, the unequivocal trend of those changes has been to increase the legal facilities of divorce; and, as Dr. Ellis remarks, “ in no civilised

<sup>1</sup> *The Civil Code of Japan* (Bremen & Tokyo, s.d.), §§ 808, 809, 813.

<sup>2</sup> *The History of Human Marriage*, iii. 316 sq.

country is there any progressive movement for adding to the legal impediments".<sup>1</sup> The legislators have not, like the framers of the Minority Report of the Royal Commission of 1909, found reasons to think that "the State is called rather to strengthen than to relax the strictness of its marriage laws".<sup>2</sup> Montaigne wrote long ago: "We have thought to tie the nuptial knot of our marriages more fast and firm by having taken away all means of dissolving it; but the knot of the will and affection is so much the more slackened and made loose, by how much that of constraint is drawn closer. . . . Quod licet, ingratum est; quod non licet, acrius urit ('What you may, is displeasing; what is forbidden, whets the appetite')".<sup>3</sup> A strong reason for the recommendations of the majority report of the Royal Commission was the probability that if divorces could not be obtained in the cases recommended, many of those who wanted them, but could not get them, would form irregular connections.<sup>4</sup> "Paradoxical as it may appear," says Dr. Lichtenberger, "it is the reverse of the traditional process which seems to give the greatest promise of success, that is, the loosening of the marriage bonds in order to strengthen them".<sup>5</sup>

It is a mistake to believe that the rates of divorces are proportionate to the facility with which divorce may be obtained according to law. Dr. Willcox even maintains that "the immediate, direct and measurable influence of legislation is subsidiary, unimportant, almost imper-

<sup>1</sup> H. Ellis, *Studies in the Psychology of Sex*, vii. (Philadelphia, 1928), p. 508.

<sup>2</sup> *Royal Commission on Divorce and Matrimonial Causes, Minority Report*.

<sup>3</sup> M. de Montaigne, *Essais*, book ii. ch. 15 (English translation, ii. [London, 1877]), p. 387).

<sup>4</sup> *Royal Commission on Divorce and Matrimonial Causes, Report of the Commissioners*, § 238.

<sup>5</sup> J. P. Lichtenberger, *Divorce* (New York & London, 1931), p. 456.



ceptible ".<sup>1</sup> In support of this opinion he pointed out that in New York, in spite of its more stringent divorce law, the rate of divorces was higher than in New Jersey and only a little lower than in Pennsylvania. This means that more divorces for adultery were granted in New York, in proportion to the population, than for adultery and desertion in New Jersey, and almost as many as for adultery, cruelty, and imprisonment in Pennsylvania. From this he drew the conclusion that "limiting the causes increases the number of divorces in those which remain, but without materially affecting the total number. A certain proportion of the married couples in the three states desired divorce and were willing to offer the evidence required in order to obtain the decree ".<sup>2</sup> Professor Lichtenberger more recently tabulated the new grounds for divorce legislated in twelve of the eighteen states in which significant changes were made, and examined the divorce-rate in the five years following each of those twelve new pieces of legislation. He then found that in not a single instance was there the slightest suggestion that the divorce-rate in any state had been influenced materially by the introduction of new causes.<sup>3</sup> Another American writer points out that legal grounds for divorce fail to explain the wide divergence in state divorce-rates between the eastern and western sections of the country;<sup>4</sup> and nearly every one of the American states has a higher divorce-rate than any European country, although their grounds of divorce are more restricted than those laid down in several European law-books.<sup>5</sup> Much depends, of course, on the manner in which the law is administered.

<sup>1</sup> W. F. Willcox, *The Divorce Problem* (New York, 1891), p. 61.

<sup>2</sup> *Ibid.* p. 45 sq.

<sup>3</sup> Lichtenberger, *op. cit.* p. 185.

<sup>4</sup> A. Cahen, *Statistical Analysis of American Divorce* (New York, 1932), p. 139.

<sup>5</sup> *The History of Human Marriage*, iii. 364 sq.

It seems that the exceptionally great divorce-rates in the United States are largely due to the laxity of procedure which has grown up there. One wife alleges that her husband has never offered to take her out "riding" (driving); another, that he does not come home till ten o'clock at night, and when he does return he keeps plaintiff awake talking.<sup>1</sup> At the same time we find that in England the removal of a legal obstacle to divorce has distinctly increased its frequency. Shortly after the Act was passed in 1923 which gave men and women equality as regards grounds for divorce, the divorce-rate began to climb, and an estimate of this increase shows that between 1924 and 1930 an addition of about 36 per cent. per year was made to the residual divorces as a result of that Act;<sup>2</sup> this, however, may be regarded as an extreme case. But while the stringency of the law may generally exercise comparatively little influence on the number of divorces, it certainly leads to a great deal of falsehood, perjury, and humiliating pretences. As Judge Lindsey remarks, "it must be shown, often by deliberately manufactured testimony, that one or the other or both of the parties have been guilty of some reprehensible conduct toward each other, such as adultery, cruelty, and the like; and thus, in order to break away from each other, they must stand up in public and accuse each other of offences that would often be impossible to either of them".<sup>3</sup>

The surest method of keeping down divorces is to make them very costly. The history of divorce in England gives us convincing evidence of this. Although the annulment of marriage by the Church was possible in early times, there was no real divorce (that is, divorce

<sup>1</sup> Bryce, *op. cit.* ii. 441 *sqq.*

<sup>2</sup> D. V. Glass, 'Divorce in England and Wales', in *Sociological Review*, xxvi. (London, 1934), p. 296.

<sup>3</sup> B. B. Lindsey and Wainwright Evans, *The Revolt of Modern Youth* (London, etc., 1928), p. 137 *sq.*



*a vinculo*) until the middle of the sixteenth century, when the Marquis of Northampton had his second marriage declared valid by a "Commission of learned men" on the ground of his first wife's infidelity. This decision was confirmed by Act of Parliament, and it was by this means that divorces were obtained in the succeeding centuries, since a valid English marriage could not be dissolved by mere judicial authority. But such a parliamentary divorce was a remedy that was reserved for the very rich: owing to the triple cost of the law action, the ecclesiastical decree granting a "divorce from bed and board", and the legislative proceedings, it could be obtained only through the expenditure of a fortune sometimes amounting to thousands of pounds. The result was that only 110 divorce bills were passed during the period 1715 to 1852, an average of less than one a year.<sup>1</sup> In the civil divorce law of 1857 the legal principle of the indissolubility of marriage was at last abandoned (after stubborn resistance), and for the dilatory and expensive proceedings of three tribunals was substituted one inquiry by a court specially constituted to exercise this jurisdiction. The cost of divorce was thus reduced, but it remained still sufficiently high to make divorce restricted to a definite monetary class. This was hardly creditable to a nation who was proud of its democratic institutions, and in 1914 a Poor Persons' Procedure was initiated, which made it possible for a "poor person"—one whose income does not exceed £2 a week or who does not possess goods worth more than £50—to obtain a divorce for not more than £5 and frequently even for a few shillings or nothing. Now at last the working class began to enter the field of divorce: during the period 1922 to 1930 in six of the years, Poor Persons added not less than 45 per cent. per year to the other

<sup>1</sup> *The History of Human Marriage*, iii. 336 sq.; Glass, *loc. cit.* p. 288.

divorces.<sup>1</sup> Yet the law is still harsh to people of small means. The question of costs bears hardly on those who are just outside the limits of the Poor Persons' Act, and many judges have commented on cases in which a litigant with an income of £2, 10s. or £3 a week has become responsible for divorce costs of £100 or more. The Council of the Law Society has recommended that in such "border-line" cases the Poor Persons Committees should have power to grant a higher income certificate, but at present that remains only a recommendation. At the other end of the social scale there are cases in which the costs can amount to thousands, and sometimes tens of thousands of pounds, especially if the case goes to the Court of Appeal and, possibly, to the House of Lords.<sup>2</sup>

The existence of children has been a serious argument against facility of divorce. It could of course be no argument against an easy dissolution of childless marriages; but it is extremely seldom we find that in legal, and seldom even in proposed grounds of divorce, any discrimination is made between marriages with children and childless ones. There seems also to be good reason for making no such distinction; for when it is desirable for a couple to be divorced it is evidently, as a rule, best for the children as well, if there are any, the company and supervision of one parent being preferable to the management of two who cannot agree; as Mr. Shaw says, "an unhappy household is a bad nursery".<sup>3</sup> This is recognised by many writers whose opinions command respect,<sup>4</sup> and also by social workers who do

<sup>1</sup> Glass, *loc. cit.* pp. 291, 293, 295.

<sup>2</sup> *The Star*, August 12, 1935; *Evening News*, August 12, 1935.

<sup>3</sup> G. B. Shaw, *Getting Married* (London, 1913), p. 183.

<sup>4</sup> Ellis, *op. cit.* vi. 467 sq.; E. S. P. Haynes, *Divorce as It Might Be* (Cambridge, 1915), p. 44; W. J. Robinson, *Woman Her Sex and Love Life* (New York, 1923), p. 357 sq.; A. Moll, *Handbuch der Sexualwissenschaften* (Leipzig, 1912), p. 427; F. Künkel, in Marcuse, *Die Ehe* (Berlin & Köln, 1927), p. 469; K. Klink, *Die Reform-*



not discount the difficulties which are involved for the child, and particularly the young child, when his parents sever their marriage ties.<sup>1</sup> "No child", says Dr. Mowrer, "can develop normally in a family situation surcharged with tension between parents. Even though the parents do all in their power to conceal their conflict from their children, minimal expressions, incipient coldness and reserve, belie all attempts to hide the strained relations, and therefore react upon the child".<sup>2</sup> Dr. Nimkoff observes that such parental discord not only tends to build up tensions within the child, but also serves as an excellent training course for him. "Nothing conduces to antagonistic attitudes more than to be reared in their midst. A home torn by strife conditions the child in habits of pugnacity, and it causes him to react violently against the whole familial situation. Illness, nervous disorders, and even nervous break-down may be the child's responses to the hostile forces arrayed against him".<sup>3</sup>

There is every reason to believe that the recent trend of Western legislation to increase the facilities of divorce will continue in the future. The impediments to it are only the diluted effects of the Canon law with its total prohibition of divorce, in conformity with the ascetic spirit of Christianity. In many Catholic countries the Church has already lost her power to enforce this prohibition, and in some of them it has even been

*bestrebungen im Ehescheidungsrecht* (Berlin, 1928), reviewed in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xv. (Berlin & Köln, 1928), p. 360. B. B. Lindsey and Wainwright Evans (*The Companionate Marriage* [London, 1928]), pp. 268, 379) say at any rate that this is often the case; see also B. Russell, *Marriage and Morals* (London, 1929), p. 247 sq.

<sup>1</sup> M. F. Nimkoff, *The Family* (Cambridge, Mass., 1934), p. 449.

<sup>2</sup> E. R. Mowrer, *The Family Its Organization and Disorganization* (Chicago, 1932), p. 217.

<sup>3</sup> M. F. Nimkoff, *The Child* (Chicago & Philadelphia, 1934), p. 155.

succeeded by a remarkably liberal divorce law, owing to the fact that its grounds of divorce have been largely copied from the earlier law relating to judicial separation, which could be obtained more easily than divorce in most Protestant countries.<sup>1</sup> We may take for granted that the Canonic dogma of the indissolubility of marriage, in spite of papal protests, will, before very long, lose its hold on the legislation in the rest of the Catholic world; and so also the idea that a divorce presupposes a delinquent, which is likewise rooted in the ascetic tendencies of early Christianity, is undoubtedly doomed. The divorce laws of the different Western countries will, no doubt, always vary in details; but I think one may safely predict that divorce by mutual consent will, sooner or later, be generally recognised by them. As we have seen, it has in recent years been established in an increasing number of countries; and elsewhere it is strongly advocated by enlightened opinion, both in Europe and America.<sup>2</sup> The arguments in favour of it seem unanswerable. Milton, for instance, who was its first protagonist in Christendom, insisted that "marriage is not a mere carnal coition, but a human society";<sup>3</sup> that the just ground for divorce is "indisposition, unfitness, or contrariety of mind, arising from a cause in nature unchangeable, hindering, and ever likely to hinder, the main benefits of conjugal society, which are solace and

<sup>1</sup> *The History of Human Marriage*, iii. 357 sqq.

<sup>2</sup> Ellis, and the authorities quoted by him, *op. cit.* vi. 462 sqq.; E. S. P. Haynes, *Divorce as It Might Be* (Cambridge, 1915), pp. 4, 5, 42 sqq.; Ch. Letourneau, *The Evolution of Marriage* (London, 1891), p. 358; A. Forel, *Sexuelle Ethik* (München, 1906), p. 23 sq.; F. E. Traumann, 'Ehescheidung', in M. Marcuse, *Handwörterbuch der Sexualwissenschaft* (Bonn, 1923), p. 98; Norman Haire, *Hymen or the Future of Marriage* (London, 1928), p. 61; Lindsey and Evans, *The Companionate Marriage*, p. 379; Russell, *op. cit.* p. 184 sq.

<sup>3</sup> J. Milton, 'The Doctrine and Discipline of Divorce', in *The Prose Works of*, i. (London, 1806), p. 373.



peace ”;<sup>1</sup> and that it is a violent, cruel thing “ to force the continuing of those together, whom God and nature in the gentlest end of marriage never joined ”.<sup>2</sup> Dr. Lichtenberger observes that “ the dissolution of loveless marriages now is regarded as less immoral than their continuance. The enlightened conscience rebels against compulsion in sex relations, regarding it as a species of rape as revolting within the marriage bond as it is without ”.<sup>3</sup> Mr. Shaw makes the acute remark: “ To impose marriage on two unmarried people who do not desire to marry one another would be admittedly an act of enslavement. But it is no worse than to impose a continuation of marriage on people who have ceased to desire to be married ”.<sup>4</sup>

Certain objections have been raised to divorce by mutual agreement, besides the general one that it would make divorce too easy and thereby lessen the “ sanctity of marriage ”. In his evidence before the Royal Commission, Lord Gorell argued that divorce by mutual consent would in practice “ probably prove to amount to divorce at the will of either party who could make the other’s life unbearable in order to force a consent ”.<sup>5</sup> A similar objection might be made to the only ground of divorce which is now permitted by the law of England: it might give rise to the practice of one of the partners hectoring the other by adulterous behaviour with a view to coercing the latter into suing for a divorce. Another argument which has been adduced against divorce by mutual agreement is that it might lead to a precipitated dissolution of the marriage. Mr. Groves asks: “ How many of the marriages that have now achieved happiness would have been dissolved in the early days of matrimonial adjustment had there been in the past a

<sup>1</sup> *Ibid.* i. 347 sq.

<sup>2</sup> *Ibid.* i. 353.

<sup>3</sup> Lichtenberger, *op. cit.* p. 454 sq.

<sup>4</sup> Shaw, *op. cit.* p. 167.

<sup>5</sup> *Royal Commission on Divorce and Matrimonial Causes, Minutes of Evidence*, Lord Gorell’s Evidence, § 139.

social code built upon divorce by mutual consent? ” He answers: “ No one knows, but men and women of experience have estimated that it would have been as high as fifty per cent ”.<sup>1</sup> (Another opponent of divorce by mutual consent writes, on the contrary, that such consent to the dissolution of a marriage “ is comparatively rare, for it is a matter of human experience that one of the partners very often refuses to release the other ”.<sup>2</sup>) Precipitation is by no means infrequent when a marriage is dissolved on other grounds; many divorced couples would perhaps remarry if they did not fear it would make them ridiculous.<sup>3</sup> It is just when divorce is possible on the ground of mutual consent that legislators have taken precautions to prevent a hasty step: they have done so in all modern laws which recognise such a ground for divorce, particularly by requiring previous separation for a certain period, with the single exception of the Soviet law. Similar precautions may be taken in the future. Lindsey suggests that if the couple have children an attempt to reconcile them should be made by a commission consisting of a psychiatrist, an expert from the medical or allied scientific profession, and a lawyer, especially trained in psychology and biology. “ If it failed, then upon mutual announcement of the couple that they still wanted a divorce for incompatibility, it would be granted—because they wanted it ”.<sup>4</sup> I am not very hopeful of the success of such interference, and believe that by living apart for some time people will best be able to judge whether they want to live apart for ever. In Stockholm about 75 per cent. of the cases of consensual

<sup>1</sup> E. R. Groves, *The Marriage Crisis* (New York, etc., 1928), p. 136.

<sup>2</sup> R. De Pomerai, *Marriage Past Present and Future* (London, 1930), p. 258.

<sup>3</sup> Cf. Robinson, *op. cit.* p. 358.

<sup>4</sup> B. B. Lindsey, ‘ The Companionate Marriage ’, in *Birth Control Review*, 1931 (New York), p. 79.



separation end in divorce in spite of the efforts of mediators.<sup>1</sup> A great advantage of divorce by mutual consent—where no delinquency has to be established—is that it may become as cheap as marriage, as the intervention of a lawyer should be unnecessary except perhaps for settling questions of property.<sup>2</sup> In Soviet Russia divorce is free of cost;<sup>3</sup> the clerk who registers it may be only a grammar-school graduate.<sup>4</sup>

The suggestion has been made that divorce should be obtainable even at the desire of one of the parties, either husband or wife, as is nowadays the case in Russia, without a probationary period preceding it. According to Mr. Shaw, the husband "is to be allowed to discard his wife when he is tired of her, and the wife the husband when another man strikes her fancy". It does not matter that the other party may wish to maintain the marriage: "the same hardship arises whenever a man in love proposes marriage to a woman and is refused. The refusal is so painful to him that he often threatens to kill himself and sometimes even does it".<sup>5</sup> This argument is more witty than adequate: marriage may, after all, be reasonably supposed to impose upon a man and woman the obligation of showing greater regard for each other's feelings than can be expected in the case of unmarried people. Judge Lindsey is of opinion that a childless marriage should be dissolvable when only one of the parties wants divorce.<sup>6</sup> Dr. Schweitzer maintains that at least when there are no children the wish of either the husband or the wife to dissolve a marriage felt by him or her as an intolerable burden should be a sufficient ground for divorce; but

<sup>1</sup> Sonja Branting Westerståhl, 'Vem söker skilsmässa?' in *Hertha*, xxii. (Stockholm, 1935), p. 89.

<sup>2</sup> Haynes, *op. cit.* p. 4 sq.

<sup>3</sup> Fannie W. Halle, *Die Frau in Sowjetrussland* (Berlin, etc., 1932), p. 194.

<sup>4</sup> Hindus, *op. cit.* p. 115 sq.

<sup>5</sup> Shaw, *op. cit.* p. 167 sq.

<sup>6</sup> Lindsey and Evans, *The Companionate Marriage*, p. 379.

in order to prevent precipitation the judge should be entitled to put off the proceedings even for a considerable time, and some maintenance should be provided for the divorced partner.<sup>1</sup> Dr. Rodecurt proposes the dissolubility of a marriage at the desire of one of the spouses in all cases where the conjugal life has become greatly disturbed.<sup>2</sup> I think it more than probable that future laws will very generally admit divorce by the will of one party under certain conditions and restrictions.<sup>3</sup> In France it was legal from 1792 to 1804.<sup>4</sup> The present Swiss code contains an admirable clause to the effect that, even though none of the specified causes for divorce exists, a marriage may be dissolved if there are circumstances seriously affecting the maintenance of the conjugal tie.<sup>5</sup>

While the changes which the legislation on divorce has undergone in recent times have invariably tended to make it easier, and there is no progressive movement for rendering it more difficult, suggestions to this effect have nevertheless been made by various writers in a point of vital importance. The suggested changes refer to the only universal ground of divorce, and the only ground which is recognised by the law of England. Judge Lindsey writes: "The view of the Christian Church that the mere fact of physical adultery is in every case a proper ground for divorce is, to my mind, thoroughly immoral. The really proper and moral ground for divorce is the fact that the parties of the marriage have already been torn apart spiritually.

<sup>1</sup> E. E. Schweitzer, 'Die Reform der Ehescheidung', in A. Weil, *Sexualreform und Sexualwissenschaft* (Stuttgart, 1922), p. 179.

<sup>2</sup> M. Rodecurt, 'Reformation des Sexuallebens unserer Zeit', in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xviii. (Berlin & Köln, 1931), p. 364.

<sup>3</sup> Cf. Ellis, *op. cit.* vi. 462 sq.; Forel, *op. cit.* p. 23 sq.; Haire, *op. cit.* p. 61.

<sup>4</sup> *Supra*, p. 209 sq.

<sup>5</sup> *Schweizerisches Zivilgesetzbuch vom 10. Dezember 1907* (Zürich, 1912), art. 142.



Divorce is the disrupting of the marriage tie in this spiritual sense. Physical infidelity may disturb or break down the spiritual bonds of a marriage or it may fail to do so; but divorce inevitably destroys the whole structure. In this sense, divorce is deadly to marriage".<sup>1</sup> According to Bertrand Russell, marriage should not be expected to exclude other sex relations, there should be no interference with mutual freedom in marriage, adultery in itself should not be a ground of divorce.<sup>2</sup> The Rev. A. W. Slaten considers that extra-marital sexual intercourse is not a justifiable ground for divorce except in cases where it has become chronic. "Infidelity", he says, "appears to me to be a vastly overrated cause for divorce. . . . As a matter of fact doesn't infidelity usually occur under the flame of momentary passion? Need that necessarily imply disloyalty? Does it mean that the man has ceased to love his wife? . . . Infidelity has not killed the pleasure they found in each other's company, nor affected more than temporarily their mutual respect. It is their sense of proprietorship that has been outraged".<sup>3</sup> Mr. Shaw thinks that "adultery, far from being the first and only ground for divorce, might more reasonably be made the last, or wholly excluded".<sup>4</sup> Dr. Marie Munk doubts that it should be retained as an absolute ground of divorce; an examination of the circumstances in which it was committed may show that the fault does not lie with the guilty party alone, and that there is no sufficient reason for a dissolution of the marriage.<sup>5</sup>

These suggested changes of the law of divorce may

<sup>1</sup> Lindsey and Evans, *The Companionate Marriage*, p. 277.

<sup>2</sup> Russell, *op. cit.* pp. 114. 115. 182.

<sup>3</sup> A. W. Slaten, 'Do we need a New Moral Code?' in *The Smart Set*, lxxxi. p. 27, quoted by De Pomerai, *op. cit.* p. 331.

<sup>4</sup> Shaw, *op. cit.* p. 164.

<sup>5</sup> Marie Munk, 'Der Ehebruch als Ehescheidungsgrund', in *Zeitschrift für Sexualwissenschaft*, xiv. (Berlin & Köln, 1927), p. 104 sq.

be called liberal in so far as they give married people greater facility to extra-matrimonial connections, but on the other hand they deprive them of a right referring to such an essential fact of marriage as the relation of sexual intercourse. The arguments adduced in support of them contain statements the accuracy of which is undeniable. In an earlier chapter I have pointed out that adultery does not necessarily destroy conjugal love or prevent the return of harmonious relations between husband and wife; that when it is the juridical ground for divorce it is rarely the sole or perhaps even the real ground; that the disturbance caused by it may be tempered by a more careful consideration of the case; and that some reflection may reveal that the apparently innocent party is the true cause of it. But at the same time everybody must admit that in many cases adultery justifies, nay necessitates, a break of the marriage tie. Even Bertrand Russell recognises this when he says that adultery "is no good ground for divorce, except when it involves a deliberate preference for another person, on the whole, to the husband or the wife, as the case may be".<sup>1</sup> He does not tell us how a divorce could be effected in a case where there is such a good ground for it, if adultery ceased to be a legal ground. It might perhaps be obtained, without any of those subterfuges which he rightly deprecates, if there were a law like the Swiss one, according to which a marriage may be dissolved under circumstances seriously affecting the maintenance of the conjugal tie. But Bertrand Russell does not speak of any such ground of divorce; he only suggests "divorce by mutual consent in all cases where there is not some very definite and demonstrable reason, such as insanity, to justify a one-sided desire for divorce".<sup>2</sup> I strongly doubt that any law-court would be capable of settling the question whether adultery in a given case seriously disturbs the conjugal relations or

<sup>1</sup> Russell, *op. cit.* p. 183.

<sup>2</sup> *Ibid.* p. 185.



not; this is a matter for individual decision. And I certainly believe that no divorce law, by leaving out adultery as a ground of divorce, will deprive marriage of that moderate protection against the interference of extra-matrimonial connections with which it has provided it ever before.

## CHAPTER XI

### SEXUAL BEHAVIOUR AND MORALITY

SEXUAL behaviour has always been a subject of moral judgment; indeed, so much so that when people speak of "morality" they think chiefly of sex. To call a man "moral" and a woman "virtuous" means that they are continent outside of wedlock, although these words have other meanings in dictionaries and treatises on ethics. There may be various reasons for this. One is the influence of the traditional Christian doctrine that unchastity is the central sin; another is supposed to be the immense preoccupation with sex;<sup>1</sup> but decency has also, undoubtedly, something to do with it. Murder is called murder, theft is called theft, dishonesty is called dishonesty. But it would be improper to use in polite parlance the blunt terms for sexual behaviour; hence euphemisms are substituted for them.

The Christian abhorrence of incontinence is intimately connected with the idea that sexual intercourse is defiling and in certain circumstances a mysterious cause of evil. This idea is particularly conspicuous with regard to religious observances. It is a common rule that he who performs a sacred act or enters a holy place must be ceremonially clean, and no kind of uncleanness is to be avoided more carefully than sexual pollution. We meet with notions of this kind not only in Christianity, but also in ancient Egypt, Greece, and

<sup>1</sup> B. B. Lindsey and Wainwright Evans, *The Companionate Marriage* (London, etc., 1928), p. 284; W. Lippmann, *A Preface to Morals* (London, 1929), p. 285



India, in Hebrewism and Islam. A Mohammedan would remove any defiled garment before he commences his prayer, or otherwise abstain from prayer altogether; he would not dare to approach the sanctuary of a saint in a state of sexual uncleanness; and sexual intercourse is forbidden to those who make the pilgrimage to Mecca. The Christians prescribed strict continence as a preparation for baptism and the partaking of the Eucharist. They further enjoined that no married persons should participate in any of the great festivals of the Church if they had lain together the night before; and in the Vision of Alberic, dating from the twelfth century, a special place of torture, consisting of a lake of mingled lead, pitch, and resin, is represented as existing in hell for the punishment of married people who have had intercourse on Sundays, church festivals, or fast-days. And they abstained from the marriage-bed at other times also, when they were disposed more freely to give themselves to prayer.<sup>1</sup>

Holiness is a delicate quality which is easily destroyed if anything polluting comes into contact with the holy object or person; and sexual uncleanness is not only injurious to holiness, but may also injure holy persons or objects in a more positive manner. In self-defence, therefore, gods and holy persons try to prevent polluted individuals from approaching them, and their worshippers are naturally anxious to do the same. But apart from the resentment which the sacred being must feel against the defiler, holiness is supposed to react quite mechanically against pollution, causing damage to the unclean individual, as I have amply shown in my book on *Ritual and Belief in Morocco*.<sup>2</sup> It should further be noticed that, owing to the injurious effect of pollution on holiness, an act generally regarded as sacred would,

<sup>1</sup> E. Westermarck, *The Origin and Development of the Moral Ideas*, ii. (London, 1917), p. 415 sqq.

<sup>2</sup> *Idem*, *Ritual and Belief in Morocco*, i. (London, 1926), p. 230 sqq.

if performed by an unclean individual, lack that magic efficacy which is otherwise attributed to it. Mohammed described the ablution which is a necessary preparation for prayer as "the half of faith and the key of prayer". The Syrian philosopher Jamblichus speaks of the belief that "the gods do not hear him who invokes them, if he is impure from venereal connection". A similar notion prevailed among the early Christians: with reference to a passage in the First Epistle to the Corinthians, Tertullian remarks that the Apostle added the recommendation of a temporary abstinence for the sake of adding an efficacy to prayers.<sup>1</sup>

If sexual cleanness is required even of the ordinary worshipper, it is all the more indispensable in the case of those whose special office is to attend to the sacred cult. Carried further, this idea has been a most important cause of the obligatory celibacy imposed upon the secular and regular clergy; but the religious horror of sexual uncleanness has also greatly affected Christian ideas relating to marriage and sexual relations in general. St. Paul's declaration that celibacy is preferable to marriage, and other passages in the New Testament, inspired a great enthusiasm for virginity. Commenting on the words of the Apostle, Tertullian points out that although it is better to marry than to burn, it is far better neither to marry nor to burn. Marriage "consists of that which is the essence of fornication"; whereas continence "is a means whereby a man will traffic in a mighty substance of sanctity". Virginity works miracles: Mary, the sister of Moses, leading the female band, passed on foot over the straits of the sea, and by the same grace Thecla was revered even by lions, so that the unfed beasts, lying at the feet of their prey, underwent a holy fast, neither with wanton look nor sharp claw venturing to harm the virgin. Virginity is like a spring flower always softly exhaling immortality

<sup>1</sup> *The Origin and Development of the Moral Ideas*, ii. 417 sqq.



from its white petals. The Lord Himself opens the kingdoms of the heavens to eunuchs. If Adam had preserved his obedience to the Creator he would have lived for ever in a state of virgin purity, and some harmless mode of vegetation would have peopled paradise with a race of innocent and immortal beings. This opinion was held by Gregory of Nyssa and, in a later time, by John of Damascus; but it was opposed by Thomas Aquinas, who maintained that the human race was from the beginning propagated by means of sexual intercourse, though such intercourse was originally free from all carnal desire.<sup>1</sup>

While marriage, though inferior to celibacy, had to be tolerated as necessary for the continuance of mankind, all other forms of sexual intercourse were pronounced by the Church to be mortal sins. In her Penitentials sins of unchastity were the favourite topic; and her abhorrence of them finds an echo in the secular legislation of the first Christian emperors. Panders were condemned to have molten lead poured down their throats. In the case of forcible seduction both the man and the woman, if she consented to the act, were put to death. As said above, even the innocent offspring of illicit intercourse were punished for their parents' sins with ignominy and loss of certain civil rights. Persons of different sex who were not united in wedlock were forbidden by the Church to kiss each other. The sexual desire itself, though unaccompanied with any external act, was regarded as sinful in the unmarried.<sup>2</sup>

In order to explain in full the ascetic attitude of Christianity towards sex, we have still to answer the important question *why* sexual intercourse is looked upon as unclean and defiling, or, in other words, as a mysterious source of danger. That the danger is supposed to be particularly alarming in the case of

<sup>1</sup> *Ibid.* ii. 410 sq.

<sup>2</sup> *Ibid.* ii. 431 sq.

contact between the polluted individual and anything holy is merely an instance of the general belief that holiness is exceedingly sensitive to, and readily reacts against, external influences; indeed, it is not only exceptionally susceptible to influences that are, or are supposed to be, injurious in other cases as well, but it is even affected or influenced by various acts or omissions which are otherwise considered perfectly harmless.<sup>1</sup> It should be noticed that the mere discharge of sexual matter is held to be polluting: the Penitentials prescribe that nightly pollutions, even when unaccompanied with any sexual desire, must be atoned for by the singing of a certain number of psalms.<sup>2</sup> It seems that the polluting effect attributed to the discharge of such matter is largely due to its mysterious propensities and the veil of mystery which surrounds the whole sexual nature of man. There is, moreover, the secrecy drawn over the sexual functions, and the feeling of sexual shame, which give them the appearance of something illicit and sinful. But the defiling effects ascribed to sexual intercourse are also, no doubt, connected with the notion that woman is an unclean being. Particularly during menstruation and childbirth she is supposed to be charged with mysterious baleful energy, presumably on account of the marvellous nature of these processes and especially the appearance of blood; and such frequent temporary defilement of a specifically feminine character may easily lead to the notion of the permanent uncleanness of the female sex.

It is strange to think that such crude notions have for ages exercised a dominant influence upon the moral attitude towards sex behaviour in Western civilisation. While the original notions have vanished, they have left behind feelings and views which, however irrational, have survived more or less even to the present day.

<sup>1</sup> *Ritual and Belief in Morocco*, i. 250 sqq.

<sup>2</sup> F. W. H. Wasserschleben, *Die Bussordnungen der abendländischen Kirche* (Halle, 1851), pp. 559, 560, 600.



They are embedded in the traditional moral code, in which they may persist though divested of all religious sanction; and there they are mingled with the results of tendencies that have been ever active in the moulding of the moral consciousness independently of religious or superstitious ideas. When speculating on moral opinions about sexual conduct in the future it is necessary to examine in detail the nature of those tendencies. This is a task of the utmost importance, because there are fundamental differences among them which have seldom been clearly recognised. I must therefore tax the reader's patience by delineating briefly the essential facts of the moral consciousness, as I apprehend them.

I have in earlier works endeavoured to prove that the predicates of all moral judgments, all moral concepts, are ultimately based on one or the other of the two moral emotions, moral disapproval or moral approval. They are retributive emotions. Moral disapproval is a kind of resentment, that is, a hostile attitude of mind towards a living being (or something taken for a living being) conceived as a cause of inflicted pain; moral approval is a retributive kindly emotion, that is, a friendly attitude of mind towards such a being conceived as a cause of pleasure. They are related to other kinds of resentment or retributive kindly emotion: moral disapproval to anger and the feeling of revenge, and moral approval to gratitude. But the moral emotions differ from those non-moral retributive emotions by being disinterested and, at least within certain limits, impartial. If someone inflicts an injury upon me, or upon a friend of mine, and I feel indignant at it, my indignation can be called a moral emotion only if it is felt independently of the fact that it was I or my friend who was hurt; it must be possible to assume that I should have experienced the same emotion if another similar person in similar circumstances had been subjected to the same treatment. Otherwise my emotion

of resentment would have been not moral disapproval but personal anger. So also, the kindly emotion I feel for a benefactor can be called moral approval only on condition that it is disinterested and impartial; otherwise it would be personal gratitude.

That disinterestedness and impartiality have become characteristics of those retributive emotions which we call moral emotions, is due to the fact that society was the birth-place of the moral consciousness. The first moral judgments expressed, not the private emotions of isolated individuals, but emotions felt by society at large. Tribal custom was the earliest rule of duty; the word "morality" comes from *mos*, the German *Sittlichkeit* from *Sitte*. Custom is fixed once for all, and admits of no personal preferences. It is equally binding for me and for you and for all other members of the society. A breach of it is equally wrong—that is, has the same tendency to arouse general indignation—whether I myself am immediately affected by the act or not; this implies disinterestedness. So also the condemnation of it is independent of the relationship in which the parties concerned in it stand to me personally; this implies impartiality in a larger sense. Custom is a moral rule only on account of the disapproval called forth by its transgression. In its ethical aspect it is nothing but a generalisation of emotional tendencies, applied to certain modes of conduct and transmitted from generation to generation.

We may distinguish between different classes of conditions under which disinterested retributive emotions arise. In the first place, we may feel such emotions on account of an injury inflicted, or a benefit conferred, upon another individual with whose pain, or pleasure, we sympathise and in whose welfare our altruistic sentiments cause us to take a kindly interest. For our present purpose it is sufficient to consider disinterested resentment alone. It is not only universal in mankind



—its scope varying with the scope of the altruistic sentiments—but it is also found among those of the lower animals that possess such sentiments. A mammalian mother is as hostile to the enemy of her young as to her own enemy. Social animals defend members of their own group, which evidently involves some degree of sympathetic anger. The dog who flies at any one who strikes, or even touches, his master is a very familiar instance of sympathetic resentment.

While disinterested resentment may thus be felt in consequence of an injury inflicted upon another individual as a reaction against sympathetic pain, it may also be directly produced by the cognition of the signs of resentment. We are told that “among bees, ants, and termites signs of anger by one individual may awaken the whole community to a high pitch of excitement”.<sup>1</sup> A group of the captive chimpanzees studied by Professor Köhler might be thrown into a state of blind fury by the angry cries of one of its members, “even when the majority of its members have seen nothing of what caused the first cry, and have no notion of what it is all about”.<sup>2</sup> When the yells and shrieks of a street dog-fight are heard, dogs from all sides rush to the spot, each dog apparently ready to bite any of the others. So, too, in an infuriated crowd of men one gets angry because the other is angry, and often the question, Why? is hardly asked. This form of disinterested resentment is of great importance both as an originator and, especially, as a communicator of moral ideas; it is, in fact, the main foundation of moral tradition. Men are inclined to sympathise with the resentment of persons for whom they feel regard; hence an act which, though harmless by itself, is forbidden by God and man may be not only professed but actually

<sup>1</sup> S. J. Holmes, *The Evolution of Animal Intelligence* (New York, 1911), p. 209.

<sup>2</sup> W. Köhler, *The Mentality of Apes* (London, 1927), p. 288.

felt to be wrong. The punishment inflicted by society, which as a rule is an expression of its moral indignation, may also, by arousing such a feeling, lead to the idea that the victim deserves to be punished. Children, as everybody knows, grow up with their ideas of right and wrong graduated, to a great extent, according to the temper of the father or mother; and men are not seldom, as Hobbes said, "like little children, that have no other rule of good and evill manners, but the correction they receive from their Parents, and Masters".<sup>1</sup> Any means of expressing resentment may serve as a communicator of the emotion. Besides punishment, language deserves special mention. Moral disapproval may be evoked by the very sounds of words like "murder", "theft", "cowardice", and many terms for sexual behaviour, which not merely indicate a certain mode of conduct, but also express the opprobrium attached to it.

There is yet a third way in which disinterested resentment may arise. In many cases people feel hostile to a person who inflicts no injury upon anybody. There are in the human mind what Bain called "disinterested antipathies", or sentimental aversions, "of which our fellow-beings are the subjects, and on account of which we overlook our own interest quite as much as in displaying our sympathies and affections".<sup>2</sup> Differences of taste, habit, and opinion easily create such dislikes; and these, too, have played a prominent part in the formation of moral ideas. The antipathy which is so commonly felt against anything unusual, new, or foreign, may lead to the idea that it is wrong; and when a certain act, which does no harm—apart from the painful impression it makes on the spectator—fills people with disgust or horror, they may feel no less hostile to the agent than if he had committed an offence against person, property, or good name. Such resent-

<sup>1</sup> T. Hobbes, *Leviathan*, i. 11 (Oxford, 1881), p. 76.

<sup>2</sup> A. Bain, *The Emotions and the Will* (London, 1880), p. 268.



ment may also arise from the observation of the feelings of others. As Abraham Tucker said, "we grow to love things we perceive them fond of, and contract aversions from their dislikes".<sup>1</sup>

All these ways in which disinterested resentment may arise have led to moral judgments on sexual behaviour; but all of them do not form an equally solid basis for the judgments to which they have led. The disinterested resentment felt in consequence of an injury inflicted upon another individual as a reaction against sympathetic pain, is largely at the bottom of the utilitarian theory of morality, according to which actions are right in proportion as they tend to promote happiness and wrong in proportion as they tend to produce the reverse of happiness. As I have pointed out elsewhere, the origin of utilitarianism may thus be traced to the nature of the moral emotions, although its propounders have tried, in vain, to prove its objective validity either by rational arguments or by appealing to self-evident moral intuitions; but the utilitarian doctrine also contains assertions to which those emotions give no support.<sup>2</sup> With reference to sexual behaviour everybody is, to some extent, influenced by utilitarian considerations. Even those who declare that the sexual act as such has no more concern with morality than any other private physiological act, admit, for example, that it is wrong to commit a rape or to infect another person with venereal disease. Although all moral judgments are ultimately based on emotions, the influence that intellectual factors exercise upon such judgments is very great indeed; emotions are determined by cognitions, and differ in nature or strength according as the cognitions differ. Hence utilitarian considerations are apt to assume greater importance in

<sup>1</sup> A. Tucker, *The Light of Nature Pursued*, i. (London, 1840), p. 154.

<sup>2</sup> E. Westermarck, *Ethical Relativity* (London, 1932), p. 227 *sqq.*

proportion as moral judgments are influenced by reflection and knowledge of facts.

In judging of matters relating to sexual morality men have generally made little use of their reason and been guilty of much thoughtless cruelty. Although marriage has come into existence solely for the sake of the offspring, it happens only too seldom that in sexual relations sufficient thought is bestowed upon unborn individuals. Legal provisions in favour of illegitimate children have made men somewhat more careful, for their own sake, but they have also nourished the idea that the responsibility of fatherhood may be bought off by the small sum the man has to pay for the support of his natural child—unless he be exempted even from this duty. Moreover, people are only now beginning to feel that many persons are wholly unfit for bringing into existence a new individual who is most probably doomed to a miserable life, or to an early death, on account of taints, physical or moral, inherited from his parents. As noticed above, the Roman Catholic Church still persists in forbidding the use of contraceptives under any circumstances whatsoever. Future generations will probably with a kind of horror look back at a period when the most important, and in its consequences the most far-reaching, function which has fallen to the lot of man was entirely left to individual caprice and lust.

While moral judgments that are based on disinterested resentment felt sympathetically in consequence of an injury inflicted upon another individual, assume greater importance the more moral valuation is influenced by reflection and knowledge of facts, the very reverse is the case with judgments that spring from disinterested resentment directly produced by the cognitions of signs of resentment in others. Such disinterested resentment makes moral tradition, with its claim to authority, a source of moral judgments



independently of their original causes. These causes may have been ignorance, superstition, prejudice, or sheer selfishness in those who once laid down the rules of conduct, and their prescriptions may nevertheless be indiscriminately and thoughtlessly accepted by succeeding generations. Among civilised peoples there is in such cases a frequent tendency to make antiquated opinions more acceptable by substituting new reasons for them; the arguments adduced against the most desirable changes of existing divorce laws are evidence of this. Of course, moral tradition also embodies judgments of past generations that nobody could find fault with; but in a progressive society some criticism of the old standards is unavoidable. If guided by correct utilitarian considerations it is likely to pave the way for a new tradition; if inspired by an uncritical spirit of revolt it is doomed to failure. This is, in my opinion, what we nowadays find within the sphere of sex in certain quarters where marriage and the family are declared to be bankrupt and an altogether new morality is proclaimed the successor of the old.

Moral tradition in the matter of sex is particularly loaded with opinions springing from "disinterested antipathies" or sentimental aversions, which in no branch of morality have been allowed a greater scope than here. Generally speaking, such aversions are largely responsible for that divergence which exists between actual moral ideas and a consistently utilitarian code of morality. But instead of recognising this divergence, moralists have only too often disguised it by advancing utilitarian pretexts for sentimental requirements, and have thereby missed an opportunity to act as moral educators. It is a strong point in consistent utilitarianism that it cannot accept such requirements on their own merits. There is a profound psychological reason for this. Although the origin of instinctive aversions, which are still more or

less generally felt, may be sought for in their specific usefulness, civilisation has brought about changed conditions so far removed from the state of nature that such feelings can by no means serve as utilitarian criteria of morality. If we clearly realise that a certain act is productive of no other harm but the aversion or disgust it causes, we can hardly look upon it as a proper object of moral censure, provided that the agent has not in an indelicate manner shocked anybody's feelings. When sufficiently discriminating, resentment, whether moral disapproval or non-moral anger, is too much concerned with the will of the agent to be felt towards a person who obviously neither intends to offend anyone nor is guilty of culpable oversight. Even when the person knows that his behaviour is repulsive to others, he may, on utilitarian grounds, be considered justified in acting as he does; some degree of reflection should lead to the thought that antipathies are no sufficient ground for interfering with other individuals' liberty of action either by punishing them or subjecting them to moral censure. Nobody has more powerfully denounced such interference than John Stuart Mill. He insisted on "liberty of tastes and pursuits; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow: without impediment from our fellow-creatures, so long as what we do does not harm them, even though they should think our conduct foolish, perverse, or wrong".<sup>1</sup> He has not supported this opinion by any reference to the nature of moral resentment, but it is nevertheless a discriminating result of this emotion. So also Bain wrote: "When one man endeavours to impose his likings or dislikes upon another, or when a mere sentimental preference entertained by the majority is made the law for every one, there is a very serious infringement of individual freedom on the one hand,

<sup>1</sup> J. S. Mill, *On Liberty* (London, 1859), p. 26 sq.



with nothing legitimate to set against it in the way of advantage".<sup>1</sup>

In moral judgments relating to sexual intercourse between unmarried persons sexual aversions play a prominent part. The clemency with which the seducer of a girl is judged by public opinion contrasts strikingly with the moral condemnation of his victim. Nevertheless, his behaviour may inflict a very serious injury upon the girl, whereas hers is condemned simply on account of the aversion it calls forth. Even some very judicious and open-minded writers on sex seem to have been unable to free themselves entirely from the influence of such sentimental dislikes. Though declaring that sexual relations which do not lead to the production of offspring are a purely personal matter concerning nobody but the parties themselves, they speak with moral disapproval of persons who marry for money, as well as of women who sell themselves for a night;<sup>2</sup> and even a radical like Dr. Borgius regards it as an axiom of sexual ethics that coitus without love is immoral.<sup>3</sup> Bertrand Russell observes that "prostitution is open to three grave objections: first, the danger to the health of the community; second, the psychological damage to women; and third, the psychological damage to men".<sup>4</sup> If the prostitute knowingly communicates venereal infection to her male customer she is of course morally blamable for it; but the psychological damage she may do either to him or herself is certainly not the cause of the stigma attaching to her. The cause of it is simply the feeling of disgust.

Sentimental aversions play a predominant rôle in the condemnation of the so-called sexual perversions. Auto-erotism, or self-abuse, is considered the mildest

<sup>1</sup> Bain, *op. cit.* p. 279.

<sup>2</sup> See *supra*, p. 35.

<sup>3</sup> W. Borgius, 'Ehereform?' in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xv. (Berlin & Köln, 1928), p. 389.

<sup>4</sup> B. Russell, *Marriage and Morals* (London, 1929), p. 119.

of them. In the Penitentials of the Roman Catholic Church, however, the amount of concern with it is more marked than with any other form of sexual behaviour. Omitting the chapters of discipline that apply specifically to the clergy, self-abuse was the subject of numerous paragraphs in them. With infinite care the varieties of the offence were differentiated, the persons by whom it was committed, their age, their station—lay or clerical—and dignity, the place where it was committed, and the thoughts connected with the commission. For a layman the penance ascribed was usually forty days; for the clergy it was severe according to the rank of the offender. Later theologians, including Thomas Aquinas, condemned the offence as worse than fornication.<sup>1</sup> In England the Penitentials were not only a part of the ecclesiastical discipline, but also a part of the Anglo-Saxon law; but since then law has taken no notice of self-abuse. Both its privacy and its frequency, and the attitude of public opinion towards it, would make it a very unsuitable object for criminal legislation. In the United States, Dr. Katharine B. Davis, General Secretary of the Bureau of Social Hygiene, found that more than 60 per cent. of 1000 college women whose ages ranged from 22 to 69 years gave a history of self-abuse.<sup>2</sup> Similar investigations of those who have studied the sex lives of men tend to show that this habit is at least as frequent among men as it is among women. Dr. Hamilton found that 97 of the 100 men and 74 of the 100 women who answered his questions had masturbated at some time or other in their lives after they were old enough to remember it; and his studies led him to believe that self-abuse is very common even among married people,

<sup>1</sup> G. May, *Social Control of Sex Expression* (London, 1930), p. 65 sq.

<sup>2</sup> Katharine B. Davis, *Factors in the Sex Life of Twenty-two Hundred Women* (New York & London, 1929), p. 101.



since only 17 of the men and 42 of the women could categorically deny that they had masturbated since marriage.<sup>1</sup> Of those female students at the University of Moscow whose answers to questionnaires distributed a few years before the war have been preserved, somewhat more than one-half had indulged in self-abuse for shorter or longer periods.<sup>2</sup> In recent times, at least, masturbation has attracted much more attention from the medical than from the moral point of view. The prevalent opinion nowadays is that its injuriousness to health has been very much exaggerated by earlier writers; the statement made by an American free-love enthusiast to the effect that "in a great number of cases, as every psychiatrist will testify, its effects have been devastating and pernicious",<sup>3</sup> seems to me far from unbiassed. From the moral point of view self-abuse is called rather "disgusting" than immoral. But in the Mohammedan world a more serious view is taken of it. Masturbation is there considered more reprehensible than pederasty and bestiality; according to a Moorish proverb it is equivalent to sexual intercourse with one's own mother.

As regards bestiality European legislation has been swayed by the Mosaic ordinance that in the case of sexual intercourse between a man, or woman, and a beast—which was evidently supposed to be productive of offspring—the human offender and the beast as well are to be put to death;<sup>4</sup> in England the temporal law made it felony.<sup>5</sup> Moral philosophy has also had

<sup>1</sup> G. V. Hamilton, *A Research in Marriage* (New York, 1929), pp. 42, 427, 436, 539.

<sup>2</sup> S. Weissenberg, 'Das Geschlechtsleben der russischen Studentinnen', in *Zeitschrift für Sexualwissenschaft*, xi. (Bonn, 1924), p. 13.

<sup>3</sup> V. F. Calverton, *The Bankruptcy of Marriage* (London, 1931), p. 151.

<sup>4</sup> *Exodus*, xxi. 28 sq.; *Leviticus*, xx. 15 sq.

<sup>5</sup> May, *op. cit.* p. 136.

something to say on the subject: according to Kant it is a categorical imperative of practical reason that the man whose offence has reduced him to the level of an animal should be expelled from civil society and deprived of human rights, as he is unworthy to be treated as a human being.<sup>1</sup> Kant represents this as a deduction from the general principle of requital (*jus talionis*) which, if the punishment cannot be exactly equivalent to the crime, requires equivalence according to the spirit of the law. That principle, however, has obviously not a rational, but an entirely emotional foundation; and the same is the case with the moral condemnation of bestiality, if unaffected by religion or superstition: it is considered immoral because it causes disgust. It is therefore an opinion which is nowadays gaining ground that it should not be punished at all.<sup>2</sup> In Mohammedan countries it is not looked upon in the same light as among ourselves. In Morocco, where bestiality is by no means infrequent, it is sometimes practised for medicinal and prophylactic purposes, for instance as a safeguard against imprisonment; otherwise it is, in the case of grown-up men, to some extent despised but chiefly ridiculed.<sup>3</sup> I was told by a group of mountaineers that a person who has intercourse with another man's animal has to buy for it new shoes, a new pack-saddle, and new panniers, must feed it for a day, and if it becomes

<sup>1</sup> Kant, *Metaphysische Anfangungsgründe der Rechtslehre*, Anhang (*Gesammelte Schriften*, vi. [Berlin, 1914], p. 363).

<sup>2</sup> F. Dehnnow, 'Sittlichkeitsdelikte und Strafrechtsreform', in A. Weil, *Sexualreform und Sexualwissenschaft* (Stuttgart, 1922), p. 165; 'Resolution betreffend Sexualstrafreform', *ibid.* p. 186; H. Haustein, 'Strafrecht und Sodomie vor 2 Jahrhunderten', in *Zeitschrift für Sexualwissenschaft und Sexualpolitik*, xvii. (Berlin & Köln, 1930), p. 98; A. Forel, *Die Sexuelle Frage* (München, 1931), p. 428.

<sup>3</sup> See my books, *Ritual and Belief in Morocco*, ii. 289, and *Wit and Wisdom in Morocco* (London, 1930), p. 87 sq.



ill, will have to pay its price. When I then asked what would happen if the animal was his own, the answer was, amidst much laughter, "Why should not a man be allowed to do with his animal whatever he likes?"

There is another kind of abnormal sex behaviour to which the public attitude in Christian civilisation has been determined by ancient Hebrew ideas, namely, homosexual intercourse between men. According to the Old Testament, unnatural sins were not allowed to defile the land of the Lord: whosoever should commit such abominations should be put to death. The enormous abhorrence of them expressed in this law had a very specific reason, the Hebrews' hatred of a foreign cult. Unnatural vice was the sin of a people who was not the Lord's people, the Canaanites, who thereby polluted their land, so that He visited their guilt and the land spued out its inhabitants. We know that sodomy entered as an element in their religion: besides female temple prostitutes there were male prostitutes, *qedēshīm*, attached to their temples. I have made the suggestion that the sodomitic acts committed with the latter, as well as with the female prostitutes, had in view to transfer blessings to the worshippers; in Morocco supernatural benefits are to this day expected not only from heterosexual, but also from homosexual intercourse with a holy person. The *qedēshīm* are frequently alluded to in the Old Testament, especially in the period of monarchy, when rites of a foreign origin made their way both into Israel and Judah. And it is natural that the Yahveh worshippers should regard their practices with the utmost horror as forming part of an idolatrous cult.<sup>1</sup>

This horror of homosexuality passed into Christianity. The notion that sodomy is a form of sacrilege was here strengthened by the habits of the gentiles,

<sup>1</sup> *The Origin and Development of the Moral Ideas*, ii. 480, 487 sq.

among whom St. Paul found the abominations of Sodom rampant. He denounced them as the climax of the moral corruption to which God gave the heathen because of their apostasy from him. Tertullian says that they are banished "not only from the threshold, but from all shelter of the church, because they are not sins, but monstrosities". St. Basil maintains that they deserve the same punishment as murder, idolatry, and witchcraft. According to a decree of the Council of Elvira, those who abuse boys to satisfy their lusts are denied communion even at their last hour.<sup>1</sup> During the Middle Ages heretics were accused of unnatural vice as a matter of course. Indeed so closely was sodomy associated with heresy that the same name was applied to both. Thus the French *bougre* (from the Latin *Bulgarus*, Bulgarian), to which there is an English equivalent, was originally a name given to a sect of heretics who came from Bulgaria in the eleventh century, and was afterwards applied to other heretics; but at the same time it became the regular expression for a sodomite. In mediaeval laws sodomy was repeatedly mentioned together with heresy, and the punishment was the same for both.<sup>2</sup> Throughout the Middle Ages and later, Christian lawyers thought that nothing but a painful death in the flames could atone for the sinful act. In France persons were actually burned for it in the middle and latter part of the eighteenth century. In England it was punishable by death till 1861, although in practice the extreme punishment was not inflicted.<sup>3</sup> It is interesting to notice that in one other religion, besides Hebrewism and Christianity, it has been looked upon with the same abhorrence, namely, Zoroastrianism, and there also as a practice of infidels, of Turanian shamanists.<sup>4</sup>

<sup>1</sup> *The Origin and Development of the Moral Ideas*, ii. 480.

<sup>2</sup> *Ibid.* ii. 489.

<sup>3</sup> *Ibid.* ii. 481 sq.

<sup>4</sup> *Ibid.* ii. 479, 480, 486 sq.



Where no such religious influence has been operative, the moral attitude towards homosexual practices has been very different. Among uncivilised peoples they are generally taken little notice of; they may be a subject for derision or contemptuous remarks, wounding the vanity of the delinquent by the implication that he must be unable to procure the full natural enjoyment of his impulse if he has to resort to such substitutes.<sup>1</sup> Chinese law makes little distinction between unnatural and other sexual offences; but as a matter of fact the former are regarded as less hurtful to the community than ordinary immorality. In Japan there was no law against homosexual intercourse till the revolution of 1868, and we are told that in the period of Japanese chivalry it was considered more heroic if a man loved a person of his own sex than if he loved a woman. Mohammed forbade sodomy, and the general theory of his followers is that it should be punished like fornication; but in the Mohammedan world it is practically regarded, at most, as a mere peccadillo. The Hindus hold a more serious opinion about it, but their sacred books deal with it leniently; according to the laws of Manu, "a twice-born man who commits an unnatural offence with a male . . . shall bathe, dressed in his clothes". The laws of the ancient Scandinavians ignored homosexual practices, though passive pederasts were much despised by them, being identified with cowards and regarded as sorcerers. In ancient Greece pederasty in its baser forms was censured, though generally, it seems, with no great severity; but the universal rule was apparently that when decorum was observed in the friendship between a man and a youth, no inquiries were made into the details of the relationship. And this attachment was not only regarded as

<sup>1</sup> See e.g. B. Malinowski, *The Sexual Life of Savages in North-Western Melanesia* (London, 1929), p. 395; Margaret Mead, *Growing up in New Guinea* (New York, 1930), p. 166.

permissible, but was praised as the highest form of love, as the offspring of the heavenly Aphrodite, as a path leading to virtue, as a weapon against tyranny, as a safeguard of civic liberty, as a source of national greatness and glory. In Rome there was an old law of unknown date which imposed a mulct on him who committed pederasty with a free person; but this law, of which very little is known, had lain dormant for ages, and the subject of ordinary homosexual intercourse never afterwards attracted the attention of legislators, until Christianity became the religion of the Roman Empire.<sup>1</sup>

In Christian Europe the rationalistic movement of the eighteenth century brought about a change in the attitude towards homosexual practices. To punish sodomy with death, it was said, is atrocious; when unconnected with violence, the law ought to take no notice of it at all. It does not violate any other person's right, its influence on society is merely indirect, like that of drunkenness and free love; it is a disgusting vice, but its only proper punishment is contempt.<sup>2</sup> This view was adopted by the French *Code pénal*, according to which homosexual practices in private, between two consenting adult parties, whether men or women, are absolutely unpunished. The homosexual act is treated as a crime only when it implies an outrage on public decency, or when there is violence or absence of consent, or when one of the parties is under age or unable to give valid consent.<sup>3</sup> This method of dealing with homosexuality has been followed especially by the legislators of the other Latin countries in Europe and

<sup>1</sup> *The Origin and Development of the Moral Ideas*, ii. 474 sqq.

<sup>2</sup> Note of the Editors of Kehl's edition of Voltaire's 'Prix de la justice et de l'humanité', in *Œuvres complètes*, v. (Paris, 1837), p. 437 n. 2.

<sup>3</sup> *Code pénal*, art. 330 sqq. Cf. J. Chevalier, *L'Inversion sexuelle* (Lyon & Paris, 1893), p. 431 sqq.; Havelock Ellis, *Studies in the Psychology of Sex*, ii. (Philadelphia, 1915), p. 347 sq.



America (except Chile), as well as Russia;<sup>1</sup> and in other countries, where the law treats the act in question *per se* as a penal offence, notably in Germany, a vigorous propaganda in favour of its alteration is carried on with the support of many men of scientific eminence.

It is argued that the deterring effect of the law must be very slight; this may be inferred not only from the great prevalence of homosexual practices in countries where they are punishable offences, but also from the fact that they are not conspicuously more prevalent in those European countries where the law takes no notice of them; the French call them "le vice allemand".<sup>2</sup> That the punishment could exercise a reformatory influence upon the offender by changing the nature of his sexual desire, is entirely out of the question.<sup>3</sup> Nor is it in the least likely to repress its gratification by engendering moral scruples; the prohibition may on the contrary, as in the case of drink, stimulate the desire.<sup>4</sup> Moreover, when homosexuality is made a legal crime the door is opened wide to blackmailers—a very serious objection.<sup>5</sup> The answer to this criticism has been that "the sound feelings of the people" insist on punishing the offence.<sup>6</sup> It has also been argued that if homosexual practices are punished when committed by men, they should likewise be punished when

<sup>1</sup> K. Hiller, 'Recht und sexuelle Minderheiten', in Weil, *op. cit.* p. 169.

<sup>2</sup> Hiller, *loc. cit.* p. 172. According to Ellis (*op. cit.* ii. 350 *sq.*) homosexuality abounds perhaps to a much greater extent in Germany than in France.

<sup>3</sup> A. Moll, *Die Conträre Sexualempfindung* (Berlin, 1891), p. 235 *sq.*

<sup>4</sup> C. Müller-Braunschweig, 'Psychoanalyse und Sexualreform', in Weil, *op. cit.* p. 144. I know a man with homosexual habits who declared that he would be sorry to see the English law changed, as then the practice would lose its charm. Ellis (*op. cit.* ii. 351 n. 2) mentions a similar case.

<sup>5</sup> See *e.g.* Haustein, *loc. cit.* p. 98 *sq.*

<sup>6</sup> Hiller, *loc. cit.* p. 170.

committed by women. This is actually the case in Austria, but a proposal to the same effect which was made in Germany was rejected.<sup>1</sup> For various reasons the sexual abnormalities of women have attracted much less attention than those of men. Theodore's Penitential in the seventh century assigned a penance of three years to "a woman fornicating with a woman";<sup>2</sup> but this was much less than that prescribed for male homosexual practices.<sup>3</sup> We should remember that the Canaanite atrocities were perpetrated by men.

Various attempts have been made by philosophers to explain the guilt attached to masculine homosexuality. Kant looks upon it as a pollution of human dignity,<sup>4</sup> and finds that the categorical imperative of practical reason prescribes castration as its punishment.<sup>5</sup> Schopenhauer gives highly metaphysical explanations, connected with his general theory of the will, both of the homosexual desire and of the condemnation of pederasty;<sup>6</sup> but in one of his works he simply says that the wrongness of the latter lies in the seduction of the younger and inexperienced party, who is thereby ruined both physically and morally.<sup>7</sup> He does not raise the question whether the seduction of a youth is fraught with so much more terrible consequences than that of a girl

<sup>1</sup> Moll, *op. cit.* p. 241 n.; *Zeitschrift für Sexualwissenschaft*, ii. (Bonn, 1915), p. 11 sq.; vii. (1921), p. 112.

<sup>2</sup> Theodore, *Pœnitentiale*, i. 2. 12; in Wasserschleben, *op. cit.* p. 186.

<sup>3</sup> Theodore, *op. cit.* i. 2. 5; in Wasserschleben, *op. cit.* p. 185.

<sup>4</sup> Kant, *Metaphysische Anfangungsgründe der Tugendlehre*, § 7 (*Gesammelte Schriften*, vi. [Berlin, 1914]), p. 425.

<sup>5</sup> *Idem*, *Metaphysische Anfangungsgründe der Rechtslehre*, Anhang (*Gesammelte Schriften*, vi. 363).

<sup>6</sup> Schopenhauer, *Die Welt als Wille und Vorstellung*, ii. (*Sämtliche Werke*, iii. [Leipzig, 1916]), p. 646 sqq.; *idem*, *Parerga und Paralipomena*, ii. (*Sämtliche Werke*, vi. [Leipzig, 1916]), § 168, p. 340.

<sup>7</sup> *Idem*, *Die Grundlage der Moral*, § 5 (*Sämtliche Werke*, iv.<sup>2</sup> [Leipzig, 1916], p. 128 sq.).



as to justify the enormous difference in the treatment of the seducer. Professor McDougall also condemns the practice on utilitarian grounds. He writes: "The strong condemnation of pederasty which is common to most of the higher civilisations is entirely justifiable. . . . If sexual inversion were always and only a purely innate peculiarity, there would be much to be said on the side of those who plead for individual freedom in this matter. But, so far from this being the case, it seems to be clearly proved that the example and influence of sexual perverts may and actually does determine the perversion of many individuals who, if shielded from such influences, would develop in a normal manner. This being so, it follows that the social approval of homosexuality or of pederasty (even in its milder and less ignoble forms) tends to set up a vicious circle, the operation of which misdirects the sex impulse of increasing numbers of the successive generations, and therefore (as in ancient Greece) tends to the decay of the normal relations between the sexes and to the destruction of the society which has taken this false step".<sup>1</sup>

There is no doubt that inversion—which implies that the person for the gratification of his sexual desire actually prefers his own sex to the opposite one—may be the result of very early habits. When I wrote the chapter on homosexual love in my book *The Origin and Development of the Moral Ideas*, my observations in Morocco led me to oppose the view, then held by authorities on homosexuality, that acquired inversion is found only in occasional circumstances.<sup>2</sup> But it seems to me extremely improbable that seduction at an age so advanced as that required for the impunity of pederasty even by the most liberal laws, as also by proposals to

<sup>1</sup> W. McDougall, *An Introduction to Social Psychology* (London, 1926), p. 357 sq.

<sup>2</sup> *The Origin and Development of the Moral Ideas*, ii. 468.

alter the existing law, could make the seduced person an invert without a strong congenital predisposition. This is also the opinion of Moll<sup>1</sup> and of Ellis, who says that "in individuals not already predisposed it is far more likely to produce disgust, as it did in the case of the youthful Rousseau. 'He only can be seduced', as Moll puts it, 'who is capable of being seduced'".<sup>2</sup> But Professor McDougall wants to justify the hardship inflicted upon homosexuals not only by public opinion, but also by the present law of England. He takes evidently for granted that criminal law is a powerful instrument in repressing homosexuality. In addition to what has been said above, I may quote Ellis' statement that in England, where the law is exceptionally severe, "yet, according to the evidence of those who have an international acquaintance with these matters, homosexuality is fully as prevalent as on the Continent; some would say that it is more so".<sup>3</sup> Professor McDougall must either be ignorant of the frequency of homosexuality in this country or assume that if the law were less draconic, it would be even much more prevalent there—indeed more prevalent than in any other European country.

It seems to me obvious that the censure to which homosexual intercourse as such is so frequently subject is, when uninfluenced by any religious considerations, in the first place due to that feeling of aversion or disgust which it tends to call forth in normally constituted adult individuals, whose sexual instincts have developed under normal conditions. This feeling tends to abate or disappear where special circumstances, such as absence of the other sex, the seclusion of women, or other facts, have given rise to widespread homosexual practices; and in no case seem even the baser forms of homo-

<sup>1</sup> Moll, *op. cit.* p. 241 *sqq.*

<sup>2</sup> Ellis, *op. cit.* ii. 322 *sq.*

<sup>3</sup> *Ibid.* ii. 351. Cf. M. Hirschfeld, *Die Homosexualität* (Berlin, 1920), p. 546.



sexuality to have led to anything like those drastic measures that we find where the condemnation of them has been influenced by religious beliefs.

There are still to be mentioned certain circumstances that have affected the opinions about homosexuality in the Western world. It is popularly supposed to be an abnormality of comparatively few degenerate individuals. Only recent investigations have disclosed the fact that it is found in a very considerable number of people of either sex. In Germany, according to Dr. Hirschfeld, the proportion of inverts are somewhat over 2 per cent. and that of bisexual persons 4 per cent.<sup>1</sup> As to the prevalence of homosexuality in France opinions vary, but Dr. Ellis maintains that whilst it is less conspicuous there and in the other Latin countries than in Teutonic lands, it seems very doubtful whether inborn inversion is in any considerable degree rarer in France than in Germany. He also thinks we may probably conclude that the proportion of inverts in England is the same as in other related and neighbouring lands, that is to say, slightly over 2 per cent., which would give the homosexual population of Great Britain as somewhere about a million.<sup>2</sup> All those estimates must of course be hazardous, but they are much more likely to be too low than too high; for homosexuals generally try to conceal their proclivities, and often succeed in keeping them secret from their acquaintances. We have much higher figures in answers given to inquiries in America. Dr. Davis writes: "Slightly over 50 per cent. of a group of 1200 women college graduates, at least five years out of college, state that they have experienced intense emotional relations with other women, and that in slightly more than half these cases, or 26 per cent. of the entire group, the experience has been accompanied by overt physical practices".<sup>3</sup> Of Dr. Hamilton's group

<sup>1</sup> Hirschfeld, *op. cit.* pp. 493, 485.

<sup>2</sup> Ellis, *op. cit.* ii. 62, 64.

<sup>3</sup> Davis, *op. cit.* p. 277.

of one hundred married men and an equal number of married women, 17 men and 26 women had indulged in homosexual episodes since the eighteenth year.<sup>1</sup>

Many of those persons may, of course, have been not genuine inverters but bisexual, that is, persons attracted to both sexes. Bisexuality may merge imperceptibly into real inversion, and on the other hand there may be a bisexual strain in persons who are, or become, normally heterosexual; between inversion and normal sexuality there seem to be all shades of variation. Indeed, hardly any man is a hundred per cent. man, hardly any woman a hundred per cent. woman. As William James said, inversion is a "kind of sexual appetite of which very likely most men possess the germinal possibility".<sup>2</sup> Many physiologists are nowadays of opinion that each sex contains the latent characters of the other sex—in other words, is latently hermaphrodite. Among mammals the male possesses useless nipples, which occasionally even develop into breasts, and the female possesses a clitoris, which is merely a rudimentary penis, and may also develop. So, too, a homosexual tendency may be regarded as simply the psychical manifestation of special characters of the other sex, susceptible of being evolved under certain circumstances, such as may occur about the age of puberty.<sup>3</sup> Then the sexual instinct of boys and girls shows plain signs of a homosexual tendency, and is often more or less undifferentiated.<sup>4</sup> When facts of this kind become

<sup>1</sup> Hamilton, *op. cit.* p. 497.

<sup>2</sup> W. James, *The Principles of Psychology*, ii. (London, 1891), p. 439.

<sup>3</sup> F. H. A. Marshall, *The Physiology of Reproduction* (London, 1922), p. 689 *sqq.*

<sup>4</sup> M. Dessoir, 'Zur Psychologie der Vita sexualis', in *Allgemeine Zeitschrift für Psychiatrie und psychisch-gerichtliche Medizin*, v. (Berlin, 1894), p. 941 *sqq.*; Ellis, *op. cit.* ii. 79 *sqq.*; A. Moll, *The Sexual Life of the Child* (London, 1912), p. 61 *sqq.*; S. Freud, *Drei Abhandlungen zur Sexualtheorie* (Leipzig & Wien, 1926), p. 104.



more commonly known, they can hardly fail to influence public opinion about homosexuality.

The same may be said of some other findings of modern sexology. Homosexuality is frequently looked upon as a sign of moral degeneracy of a more general kind, but we now know that this is not the case. All varieties of moral character are found among invert, just as among normal people; and it has been pointed out by Dr. Ellis that among great moral leaders and persons with strong ethical instincts there has been, and is to this day, in many cases a tendency towards the more elevated forms of homosexual feeling. That homosexuality is remarkably common among men of exceptional intellect was long ago noted by Dante, and has often been noted since; but it is among artists that homosexuality may most strikingly be traced.<sup>1</sup>

While we may assume that a deepened insight into the nature of homosexuality will make people somewhat more tolerant in their attitude towards it, there is another factor that must influence the moral judgment of homosexual practices. When the last residue of the influence of antiquated religious ideas has vanished, normal persons will still feel aversion to those practices, just as genuine invert often feel aversion to sexual connections with the other sex. But, as I have observed above, owing to the very nature of the moral emotions, aversion cannot be regarded as an adequate cause of moral censure by anyone whose judgment is sufficiently discriminate. To be called wrong an act must then be productive of other harm than the mere aversion it causes, provided that the agent has not in an indecent manner shocked anyone's feelings. Any moral condemnation of homosexual practices (nobody can, of course, be blamed on account of his abnormal desire) must be founded on an opinion of their hurtfulness, individual or public, whatever it may be. But thought-

<sup>1</sup> Ellis, *op. cit.* ii. 26 *sqq.*

ful people will be on their guard against the common tendency to seek a rational justification for judgments springing merely from sentimental dislikes.

Another sexual abnormality that is morally condemned and very frequently looked upon with the utmost horror is incest. It seems that a son is universally prohibited by custom or law from marrying his mother and a father from marrying his daughter. Hardly less universal is the rule which forbids marriages between brothers and sisters who are children of the same father and mother; the best authenticated exceptions to this rule are generally found in the families of kings or ruling chiefs, and there can be little doubt that they are due to the aim of maintaining the purity of the royal blood. Among peoples unaffected by modern civilisation the rules against incest are probably in the large majority of cases more extensive than among ourselves; very often they refer to all the members of the clan.<sup>1</sup>

Many attempts have been made to account for those rules. I have criticised them in detail elsewhere and set forth my own theory on the subject, suggested by a multitude of facts. Generally speaking, there is a remarkable lack of inclination for sexual intercourse between persons who have been living closely together from the childhood of one or both of them. This has been recognised by various writers as a psychological fact proved by common experience, and is attested by statements from different parts of the world. Even among the lower animals there are indications that the pairing instinct fails to be stimulated by companions and seeks strangers for its gratification.<sup>2</sup> It is true that sexual indifference is not by itself adequate to account

<sup>1</sup> E. Westermarck, *The History of Human Marriage*, ii. (London, 1921), ch. xix.

<sup>2</sup> *Ibid.* ii. 193 *sqq.*; E. Westermarck, *Three Essays on Sex and Marriage* (London, 1934), p. 72 *sqq.*



for prohibitory rules. But such indifference is very generally combined with sexual aversion when the act is thought of; indeed, I believe that this is normally the case whenever the idea of sexual intercourse occupies the mind with sufficient intensity and a desire fails to appear. An old and ugly woman, for instance, would in such circumstances become sexually repulsive to most men; and to many inverts any woman, as an object of sexual desire, is not merely indifferent but disgusting.<sup>1</sup> And aversions that are generally felt lead readily to moral disapproval and prohibitory customs and laws.

This I take to be the fundamental cause of the prohibition of incest. Persons who have been living together from childhood are as a rule near relatives. Hence their aversion to sexual relations with one another displays itself in custom and law, which naturally take into consideration only general and well-defined cases, as a prohibition of intercourse between persons who are near of kin. This interpretation of their aversion in terms of kinship is exactly analogous to another case of equally world-wide occurrence, namely, the process which has led to the association of all sorts of social rights and duties with kinship, though ultimately depending upon close living together. Parental, filial, and fraternal duties and rights, and those referring to relatives more remotely allied, are not in the first instance rooted in considerations of blood-relationship. If men, instead of remaining in the circle where they were born and keeping with their kindred, had isolated themselves or united with strangers, there would certainly be no blood-bond at all. That social rights and duties connected with kinship have come to include relatives who do not live together, is due to the fact that they have a strong tendency to last after the local tie is broken, particularly through the influence of a common name.

<sup>1</sup> Ellis, *op. cit.* ii. 278 sq.

The same is the case with the exogamous rules. Clan exogamy has its counterpart, for instance, in the blood-feud as a duty incumbent on the whole clan, whether the members of it live together or not. When the clan system broke down, those rules were reduced to prohibitions against unions between near relatives or members of the same family only.

In the case of the exogamous rules the social prohibition is often strengthened by superstitious beliefs, which have added horror to the natural feeling of reluctance. A transgression of the prohibition is supposed to be attended with all sorts of injurious consequences for the offspring of the guilty parents, or to involve the whole community in danger and disaster by causing epidemics, earthquakes, sterility of women, plants, or animals, or other calamities.<sup>1</sup> These facts, however, do not seem to give much support to the opinion that savages have discovered by experience the injurious effects of close intermarriage. Considering the aversion with which consanguineous marriages are looked upon, and considering further how readily all kinds of superstition arise in connection with the sexual function, we may quite expect to find evil consequences attributed to incest; and the idea that these consequences will fall upon the incestuous brood is intelligible enough. Other forms of illicit love, such as adultery or fornication, are also believed to produce similar disastrous effects.

At the same time it seems to me quite probable that injurious effects resulting from close inbreeding are the cause of that lack of inclination for, and consequent aversion to, sexual intercourse between persons who from childhood have lived together in that intimacy which characterises the mutual relations of the nearest kindred. I maintain that any satisfactory explanation of the normal characteristics of the sexual instinct,

<sup>1</sup> *The History of Human Marriage*, ii. 170 sqq.



which is of such immense importance for the existence of the species, must be sought for in their specific usefulness. We may assume that in this, as in other cases, natural selection has operated, and by eliminating destructive tendencies and preserving useful variations has moulded the sexual instinct so as to meet the requirements of the species. It must not be argued that marriages between cousins have proved too slightly injurious to produce such a selection. For if, as I maintain, the family consisting of parents and children prevailed as a social unit among our early human or semi-human progenitors, that peculiarity of the sexual instinct of which I am speaking would have grown up among them as a consequence of the harmfulness of unions between the very nearest relatives, unless indeed it was an inheritance from a still earlier mammalian species. But once acquired, it would naturally show itself also in the case of more remote relatives or quite unrelated persons who lived in close intimacy from childhood, however harmless the unions between them might be. And through an association of ideas and feelings it might readily lead to the prohibition of sexual intercourse between individuals who did not live together at all. Needless to say, however, that the main part of my theory of the prohibition of incest does not stand or fall with the biological explanation which it contains. This is only a hypothesis; whereas the psychical peculiarities which it is intended to elucidate are, so far as I can see, facts proved by common experience.

Even those facts, however, have been disputed on the ground that incestuous practices actually exist. So they do. But in most cases these are evidently due to the lack of more suitable partners, just as homosexual practices are very frequently due to the absence of available women. In Europe, at the present day, according to Bloch, "incest occurs almost exclusively

as the result of chance associations—as, for example, in alcoholic intoxication, in consequence of close domestic intimacy in small dwellings, in the absence of other opportunity for sexual intercourse”.<sup>1</sup> On examining the cases of incest which were tried by Swedish courts in the period 1913 to 1933, Dr. Torsten Sondén found that their main causes were intoxication and narrow dwellings; the majority of them occurred among country people and all in the lower strata of society.<sup>2</sup> Stekel tells us that in every case of incest between children of the same family which he has come across, those who committed it had grown up in seclusion from children belonging to other families.<sup>3</sup> We must not forget that a lack of desire, and even a positive feeling of aversion, may in certain cases be overcome. The sexual instinct is so powerful that when it cannot be gratified in the normal manner it may seek for abnormal gratification—masturbation, incest, homosexual intercourse, even bestiality. Incest springing from sexual preference undoubtedly occurs in some exceptional cases; but this is only what may be expected from the great variability of the sexual impulse. I have no doubt that in the world generally, and in some countries particularly, homosexual practices are infinitely more prevalent than incest, which may be easily explained by the frequent prevalence of bisexual tendencies, in addition to genuine inversion.

Freud maintains that every heterosexual person cherishes in the unconscious part of his or her mind a desire for sexual intimacy with the parent of the opposite sex, but this theory has been contradicted by

<sup>1</sup> I. Bloch, *The Sexual Life of Our Time* (London, 1908), p. 639.

<sup>2</sup> ‘Incestbrotten en allvarlig samhällsfara’, in *Stockholms-Tidningen—Stockholms Dagblad*, August 23, 1935.

<sup>3</sup> W. Stekel, ‘Der Abbau des Inzestkomplexes’, in *Fortschritte der Sexualwissenschaft und Psychoanalyse*, ii. (Leipzig & Wien, 1926), p. 238.



psycho-analysts of other schools; and his attempt to explain the well-nigh universal aversion to incest as the result of a repression of original incestuous tendencies is a hopeless failure.<sup>1</sup> It is a significant fact that while the exogamous rules of the Roman Catholic Church, in spite of the religious sanction given them, have been much reduced by the laws of all Christian countries, there is no law that allows marriage between parent and child or between brother and sister; even the Russian Soviet law of marriage and the family, which is the most liberal modern law of its kind, prohibits such unions. The explanation of this is simple enough. The prohibition of them is not felt as a restraint upon individual feelings, because in all normal cases there is no desire for the forbidden act, and the exceptions to this rule are so infinitesimal that no suggestion has ever been made that the law should be changed.

I cannot believe that the prohibition of marriage between the nearest relatives will be removed in the future. Even if the sentimental aversion to sexual relations between them will cease to be recognised as an adequate ground for a moral condemnation of such relations, there remains a utilitarian reason for preventing them. So far as mankind is concerned, a satisfactory study of the effects of close inbreeding is prevented by the general absence of marriages between parent and child and between brother and sister. The closest kind of intermarriage that offers itself for scientific examination is that between first cousins, and there is a considerable literature on the subject; but the opinions of the writers are not unanimous. It seems, however, now to be an established fact that certain physical or mental defects are more frequent among the offspring of consanguineous marriages than among the

<sup>1</sup> See my essay on 'The Oedipus Complex', in *Three Essays on Sex and Marriage*, pp. 24, 89 *sqq.*

offspring of marriages between unrelated individuals.<sup>1</sup> The experience of inbreeding among animals has led to the conclusion that it is attended with considerable danger.

As to the cause of the danger of inbreeding there is difference of opinion. Professor Baur, one of the leading geneticists of our time, maintains that the bad results which almost invariably occur when inbreeding is practised in the case of an organism wherein cross-fertilisation is the rule depend upon two very different things. In the first place, inbreeding and reproduction from individuals who are closely akin favours the mendelising-out of recessive developmental defects. Recessive characters may be passed on as unseen potentialities through one parent from one generation to another, ready to show themselves as soon as they meet with the same latent potentiality in the other partner. Many families carry hereditary recessive taints of some kind or other, without their members being aware of it. Marriage outside the family will not lead to the appearance of the taint, as not productive of homozygotic offspring—that is, offspring which has originated out of the conjugation of two reproductive cells having like hereditary equipments—but marriage within the family will favour its appearance. This is one cause, though according to Baur not the only one, of the ill-effects of inbreeding. “A second kind of ill-effect from inbreeding depends upon the fact that, for unknown reasons, inbreeding—the more speedily, the closer it is—weakens the offspring and reduces the capacity for reproduction”.<sup>2</sup> Other biologists, who also believe in the bad effects of inbreeding, attribute them exclusively to the former cause. Dr. East and Dr. Jones

<sup>1</sup> *The History of Human Marriage*, ii. 227 sqq.; *Three Essays on Sex and Marriage*, p. 152 sqq.

<sup>2</sup> E. Baur, E. Fischer, and F. Lenz, *Human Heredity* (London, 1931), p. 109.



also speak of the injurious, nay "even disastrous", immediate results of inbreeding in naturally cross-fertilised organisms, but maintain that "whatever effect it may have is due wholly to the inheritance received", or, as they say more cautiously, that "the results of inbreeding depend more upon the genetic composition of the individual subjected to inbreeding than upon any pernicious influence inherent in the process itself".<sup>1</sup> Professor Federley remarks that the injurious recessive genes are so prevalent that "the experienced breeder justly shrinks from inbreeding".<sup>2</sup> For a similar reason Professor Kraus<sup>3</sup> and Dr. Marcuse<sup>4</sup> consider a warning against the marriage of relations to be justified.

<sup>1</sup> E. M. East and D. F. Jones, *Inbreeding and Outbreeding* (Philadelphia & London [1919]), pp. 139, 188.

<sup>2</sup> H. Federley, *Das Inzuchtproblem* (Berlin, 1927), p. 37.

<sup>3</sup> F. Kraus and H. Döhrer, 'Blutsverwandtschaft in der Ehe und deren Folgen für die Nachkommenschaft', in C. von Noorden and S. Kaminer, *Krankheiten und Ehe* (Leipzig, 1916), p. 81.

<sup>4</sup> M. Marcuse, 'Verwandtenehe und Mischehe', in *Die Ehe*, edited by M. Marcuse (Berlin & Köln, 1927), p. 354.

## CONCLUDING REMARKS

My inquiry has come to an end. In drawing my inferences I have followed the method indicated in the beginning of the book. I have tried to find the causes of the various aspects of marriage under discussion, and from the assumed prevalence of the causes I have inferred the probability of future happenings. I have not concluded that something will happen simply because the line of evolution in the past or some tendency of to-day seems to suggest it. I have not based my prediction of the survival of marriage and the family on the fact that they have, presumably, always existed in mankind, but on the assumed continuance of those feelings to which we may trace their origin. I have not been led to my belief in freer divorce in the future merely by the changes which have already taken place in some modern laws, but by the reasons for those changes. When I anticipated a more general acceptance of the opinion that sexual acts are morally indifferent and no proper objects for penal legislation if nobody is injured by them, I did so not because there is already among enlightened people a tendency to look upon them in that light, but because the very nature of those emotions which underlie all moral valuation leads me to such a conclusion. I pointed out that, when sufficiently discriminating, the emotion of moral disapproval is too much concerned with the will of the agent to be felt towards a person who obviously neither intends to commit a harmful act nor is guilty of culpable oversight; and that some degree of reflection therefore



should persuade people that mere antipathies are no sufficient ground for interfering with other individuals' liberty of action, either by punishing them or subjecting them to moral censure.

There is, however, a weak point in the method: the anticipations depend upon special assumptions. The causes of certain events are assumed to lead to similar events in the future. Knowledge and intellectual discernment are assumed to increase and to produce more extensive effects than hitherto, destroying much that is due to ignorance, superstition, and thoughtlessness. At the same time, certain deep-rooted feelings are assumed to endure and continue to influence human behaviour, as they have done hitherto. But although such assumptions possess a very considerable degree of certainty so far as the nearer future is concerned, they cannot lay claim to everlasting infallibility. And—to speak only of the most essential thesis of this book—if there will be a time when conjugal and parental sentiments have vanished, I think that nothing in the world can save marriage and the family from destruction.





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human beings seek to manipulate,  
for their own ends, forces other  
than those which have been  
~~discovered~~ <sup>as</sup> empirically ~~to~~ operating  
in natural laws

magic is a process by which  
~~it is sought to bring about~~ <sup>it is sought to bring about</sup> occurrences  
human beings seek to bring  
<sup>desired</sup> about however otherwise than  
through the operation of the  
empirically established laws  
of nature.







